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CRABB'S

COMPLETE SERIES

OF

PRECEDENTS IN CONVEYANCING

AND OF

Common and Commercial Forms

IN ALPHABETICAL ORDER,

ADAPTED TO THE PRESENT STATE OF THE LAW AND THE
PRACTICE OF CONVEYANCING;

WITH

**COPIOUS PREFACES, OBSERVATIONS AND NOTES
ON THE SEVERAL DEEDS.**

EDITED BY

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THE FIFTH EDITION,

WITH NUMEROUS CORRECTIONS AND ADDITIONS,

BY

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IN TWO VOLUMES.

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PRECEDENTS

IN

CONVEYANCING,

ſc. ſc. ſc.

COPARTNERSHIP.

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SECT. 1. No contract in writing is necessary to constitute a partnership. The bare consent of the parties to act together as partners, implied from their acts, will be sufficient to bind them in that character to each other. As to third persons, an agreement to share all risks of profit and loss, *Grace v. Smith*, 2 Bl. 998; *Wau v. Carver*, 2 H. Bl. 235; *R. v. Dodd*, 9 East, 516; or in the profits only, without any risk of loss, will make a person liable as a partner, *Ex parte Langdale*, 18 Ves. 300; *Gilpin v. Enderby*, 5 L. & Ald. 954; so even the lending one's name, or holding one's s^d out to the world as a partner, will incur the liability of a partner, *Ex parte Langdale*, 18 Ves. 300. Partners whose names do not appear are usually termed "dormant partners." A dormant or sleeping partner, who brings in a part of the capital stock, without appearing in the business, is equally liable with the ostensible partner, and no agreement between the parties can prevent this liability, *Hoare v. Daves*,

Copartnership. Dougl. 371. A person may become liable as a partner as regards the creditors of the partnership (though not interested in the profits) by holding himself out as partner, either by allowing his name to appear in the firm or by acting so as to induce a belief that he is a partner. The general rule applicable to all partnerships is, that each partner is liable as regards third parties for the whole debts and engagements of the partnership, not only to the extent of his share in the partnership stock, but to the whole amount of his separate property. No private agreement between the partners can prevent this liability, though the partners as between themselves may engage to indemnify or limit the responsibility of any particular partner or class of partners.

How regulated. 2. Partnerships are regulated either by the express contract of the parties, or by the contract implied by law from the relation of the parties. The duties and obligations arising from that relation are regulated, as far as they are touched, by the express contract; but if it does not reach all those duties and obligations, they are implied and enforced by the law, *Crawshay v. Collins*, 15 Ves. 226. It is obviously, therefore, of great importance that the articles of copartnership should be explicit in all matters that relate to the partnership concern. Bonds executed by partners to each other relating to their rights as partners of the same date as the partnership deed, were read as part of the partnership contract, *Morison v. Moat*, 9 Hare, 260; 15 Jur. 787; 20 L. J., Ch. 513; see 16 Jur., 321, L. J.

Parties to the deed.

3. All persons having a legal capacity to contract may become partners; so likewise an infant may be a partner, so far as it is for his own benefit; but he must expressly disaffirm the partnership when he comes of age, otherwise he will be held liable as a partner, *Goode v. Harrison*, 5 B. & Ald. 147. A *feme covert* cannot sustain the character of a partner, although she or her husband may be beneficially interested in the profits of the concern, *Balmain v. Shore*, 9 Ves. 500.

Representatives of deceased partners.

The free and personal choice of the parties is so essentially necessary to the constituting of a partnership, that even the executors and representatives of deceased partners do not, in their representative capacity, succeed to the state and condition of partners, although a community of interest necessarily exists between them until the affairs of the partnership are wound up, *Ex parte Williams*, 11 Ves. 3; Gow on Partn. 5, 2nd ed. But if executors of a deceased partner, whose names are not added to the trade, but who continue the share of the deceased partner in the concern for the benefit of an infant child, and who on a division of the profits and loss, carry the same to the account of the infant and take no part of the profits themselves, they are liable as dormant partners, because by embarking the property in trade in the first instance, they contract a responsibility in a court of law, which their subsequent application of the profits to purposes not of personal benefit cannot vary, *Wightman v. Townroe*, 1 M. & S.

Executors and trustees liable as partners.

412; see Collyer on Partn. 355—357; Wms. Exors. Part. IV. *Copartnership*. Bk. III. s. 1. Any number of persons may exercise a trade in copartnership, unless prohibited by statute. Where the number of partners is great, the partnership is usually one of those which are called Joint Stock Companies, the consideration of which does not come within the scope of this work.

4. The commencement and duration of the partnership are usually defined; but where no time is stipulated for the commencement of a partnership, it has been held to commence from the date of the agreement, *Williams v. Jones*, 5 B. & C. 108; and where it is to commence at a future period, equity will support the agreement, if the period of duration is fixed. See AGREEMENTS (*Copartnership*), *ante*, p. 88. Commencement and duration.

5. When the style of the firm is fixed by the deed of copartnership, it is not competent to any one of the partners to alter it, *Marshal v. Colman*, 2 Jac. & Walk. 268. Style of the firm.

6. The proportion of profit and loss which each partner is to receive or sustain ought to be particularly set forth in the articles of copartnership. In the absence of any contract between partners, or any dealing from which a contract may be inferred, it will be assumed that the partners have carried on business on terms of an equal partnership, which implies not only an equal partnership *de facto* in profit and loss, but a right in each partner to claim and insist on such participation, *Peacock v. Peacock*, 16 Ves. 50; 2 Campb. 45. Notwithstanding, however, partners have shared equally in profits and losses, the presumption of an equal partnership will be rebutted if the entries in the books and accounts of the partnership, instead of absolute silence as to the shares of the partners, have described the shares in which the partners were entitled in the business as materially differing in amount and value. Entries in the books of a partnership are as conclusive of the rights of the partners as if they had been found prescribed in a regular contract, *Stewart v. Forbes*, 1 Hall & T. 461; 1 Mac. & G. 137. Proportion of profit and loss.

7. One partner cannot, without the consent of his copartners, introduce a stranger into the firm; and, consequently, cannot assign his share without such consent, although he may charge his undivided interest in favour of another, *Bray v. Fromont*, 6 Madd. 5; *Ex parte Barrow*, 2 Rose, 255. See *Mayhen's Case*, 5 De G. M. & G. 857. On this ground, articles of copartnership do not survive for the benefit of the executors of a deceased partner, unless expressly so stipulated, *Pearce v. Chamberlain*, 2 Ves. 34. And the same principle applies to the assignees of a bankrupt, *ib.* The only exception to this rule is in respect to mines, the shares of which are transferable, without any express stipulation to that effect, *Stevens v. Guppy*, 3 Russ. 171; *Fereday v. Wightwick*, 1 Russ. & Mylne, 50. Transfer of shares.

Copartnership. Stipulations of different kinds, suited to the circumstances of each particular case, are inserted in copartnership deeds in favour of particular partners or their representatives, to which courts of equity will give effect as far as possible, *Balmain v. Shore*, 9 Ves. 500.

8. Where the capital agreed to be brought in by an incoming partner is to be paid by instalments, the bankruptcy of the other party, before the payments are completed, will not enable him to withhold the remainder, unless it be expressly so stipulated, *Akhurst v. Jackson*, 1 Swans. 85; *Wilson v. Greenwood*, *ib.* 223. Sums left in, or lent to the joint trade by either of the parties, with the consent of the others, become a lien upon the copartnership stock, and carry interest, without express stipulation to that effect, *West v. Skip*, 1 Ves. 242; *Toddington v. Hullett*, *ib.* 497; *Fox v. Hanbury*, Cowp. 445.

9. Partners are joint tenants of their partnership stock, but without benefit of the *jus accrescendi*, or right of survivorship, Co. Litt. 182; *West v. Skip*, 1 Ves. 242; *Decaynes v. Noble*, 1 Mer. 564; except in regard to the good-will of a trade, which in general belongs to the survivor, unless it be otherwise stipulated, *Hammond v. Douglas*, 5 Ves. 539; see also AGREEMENT FOR A COPARTNERSHIP, *Obs.* 2, *ante*, p. 88. The legal maxim, "*jus accrescendi inter mercatores locum non habet*," applies to prevent a right of survivorship in partnership chattels. This rule applies to manufacturers as well as to merchants, *Buckley v. Barker*, 6 Exch. 164; 15 Jur. 63; 20 Law J., Exch. 114. Where freehold or copyhold property is purchased with the partnership capital, and conveyed to two partners and their heirs for the purposes of the partnership trade, such property is to be considered, on the death of one of the partners, as personal estate, not only for the payment of the partnership debts, but for every intent, as between the real and personal representatives of the deceased partner, *Phillips v. Phillips*, 1 My. & K. 649; *Houghton v. Houghton*, 11 Sim. 491; *Rowley v. Adams*, 7 Beav. 548. See *Fereday v. Wightwick*, 1 Russ. & M. 45; *Broom v. Broom*, 3 My. & K. 443; *Cookson v. Cookson*, 8 Sim. 529; *Tibbits v. Phillips*, 10 Hare, 355. A. and B. purchased land in a joint speculation with their joint monies, for the purpose of laying it out for building plots and reselling it at their joint profit or loss: it was held, that it was converted out and out, and the share of one of the partners deceased, in part of the unrealized real estate, passed to his personal representatives, *Darby v. Darby*, 3 Drew. 495; 2 Jur., N. S. 271; 25 Law J., Chan. 371; *Lyster v. Dolland*, 1 Ves. jun. 431; *Vickers v. Cowell*, 1 Beav. 529, as to mortgage money. Where lands are purchased for the purpose of the partnership concern, in equity they are considered as forming a part of the partnership property, *Foster v. Hale*, 3 Ves. 696; *Smith v. Smith*, 5 Ves. 189; and if the lands are conveyed to the partners as joint tenants the survivor is a trustee for the representatives

of the deceased partner, *Lake v. Craddock*, 3 P. Wms. 158. See *Copartnership*. *Morris v. Barrett*, 3 Y. & J. 384. If partnership property consist in part of leaseholds the representative of a deceased partner may Leaseholds. treat the surviving partner as a trustee, and if the latter renews the lease he is considered to do so for the benefit of the estate of the partners, *Clegg v. Fishwick*, 1 Hall & T. 390; 1 Mac. & G. 294; but where the trade is one of a speculative character, requiring outlay with an uncertain return, then, if the surviving partner continues the trade in his own name and renews the lease, the Court will not consider that the representative of the deceased partner has any interest, unless he contributes a due proportion of capital, *Clements v. Hall*, 2 De G. & J. 173; 4 Jur., N. S. 494; 27 L. J., Ch. 349; 24 Beav. 333. See *Clegg v. Edmondson*, 26 L. J., Ch. 673; 3 Jur., N. S. 299.

10. The duties of copartners towards each other,—namely, to give their personal attendance, to be faithful and just, not to charge the partnership estate with their separate debts, &c.,—are usually defined with precision in the partnership articles, according to the intentions of the parties. In the absence of stipulation, courts of equity act on the principle that the good faith of the parties is pledged mutually to each other and that the business shall be conducted with their actual personal interposition, *Peacock v. Peacock*, 16 Ves. 51. Where any party is to be relieved from this obligation, it must be expressly so stipulated. Duties of partners. Personal attendance.

As to the separate debts of the partners, they will not be charged upon the joint estate in any case, so long as the joint debts are unsatisfied, *R. v. Sanderson*, Wightw. 50; *Young v. Keighley*, 15 Ves. 557. Separate debts.

So in respect to the carrying on a separate trade, a covenant not to exercise the same trade, on a separate account, is a common and legal covenant, *Morris v. Colman*, 18 Ves. 438; but although parties may stipulate not to engage in any particular trade, yet this will not prevent them from engaging in some other business, *Glassington v. Thwaites*, 1 Sim. & Stu. 133; provided such trade is not injurious to the partnership concern, for where parties are bound to promote an undertaking for their common benefit, they will not be permitted to engage in any other concern which would necessarily give them an interest adverse to that undertaking, *ib.* On the same principle, the stock in trade is to be employed only for the benefit of the joint trade, and not for the advantage of any particular partner, *Beecher v. Guilburn*, Mos. 3; *Crawshay v. Collins*, 15 Ves. 227. So likewise in respect to keeping account books, &c., which partnership articles usually require, it is the duty of each partner to keep separate accounts, and to have them always ready for inspection, and the omission to do so is ground of serious complaint, *Goodman v. Whitcomb*, 1 Jac. & Walk. 593; *Rowe v. Wood*, 2 Jac. & Walk. 558. No partner is at liberty to exclude another partner from the management Carrying on separate trade. Keeping accounts.

Copartnership. of the joint concern; and in that case a court of equity will appoint a manager, *Rone v. Wood*, *ub. sup.* In cases of gross misconduct, the court will sometimes decree a dissolution, *Waters v. Taylor*, 2 Ves. & B. 8; *Crawshay v. Maule*, 1 Swanst. 508; but it will not give this relief upon trivial grounds, *Goodman v. Whitcomb*, 1 Jac. & Walk. 593.

An agreement, that if any of the several partners should not diligently and faithfully employ himself in carrying on the partnership business the others might give notice of dissolution, was construed to refer to the diligent and faithful discharge by each partner of the portion of the business carried on by him. A designed or wilful omission to make proper entries in the partnership books must be shown in order to establish a case of breach of the partnership articles on the ground of an omission to make such entries, *Smith v. Mules*, 9 Hare, 569; 16 Jur. 261; 21 Law J., Chan. 803.

Partners bound
by each other's
acts.

11. Each partner being considered as the authorized agent of his copartners, they are bound by his acts in transactions relating to the copartnership, as in buying, selling, drawing and accepting bills, *Fox v. Hanbury*, Cowp. 445; *Swan v. Steele*, 7 East, 200; *Ernest v. Nicholls*, 6 H. L. Cas. 417; 3 Jur., N. S. 919; but it is usual to restrict their authority in all these matters by express stipulation. The implied authority of one partner to bind another by promissory note or bill of exchange, is confined to partnerships for the purposes of trade, and does not apply to attornies in partnership, *Hedley v. Bainbridge*, 3 Q. B. 316; one of a firm of attornies has no general authority to bind the firm by a guarantee given to pay a debt and costs, in consideration of the plaintiff discharging his debtor out of custody, *Hasleham v. Young*, Dav. & M. 700; 5 Q. B. 833. (As to releasing of debts by partners, see COMPOSITION, Pref. s. 8, p. 563).

Annual
account.

12. The partnership articles generally direct that annual rests or accounts shall be taken; but where parties neglect to act under their articles, the court will read them as if expunged, *Jackson v. Sedgwick*, 1 Swanst. 468; and the representatives of a deceased partner may claim the profits up to the day when the last settlement ought to have been made, *Pettyt v. Janeson*, 6 Madd. 146. Partners may agree that after an account is settled during their lives it shall, notwithstanding any error, be conclusive after their deaths, *Gainsborough v. Stork*, Barnard. 312.

Dissolution of
partnership.
At the will of
either party.

13. A partnership without any agreement as to its duration, is dissoluble at the will of either party, *Peacock v. Peacock*, 16 Ves. 50; so likewise if continued without any new agreement, after the expiration of the limited period, *Featherstonhaugh v. Fenwick*, 17 Ves. 293.

By consent.

Where the copartnership is for a certain term of years, it cannot be dissolved without the consent of all parties, unless it be expressly stipulated in the deed, *Peacock v. Peacock*, 16 Ves. 50; *Goodman v. Whitcomb*, 1 Jac. & Walk. 592. In the absence of all stipulation,

By death.

a partnership is dissolved by the death of either party, *Cranford v. Hamilton*, 3 Madd. 251; or sometimes by lunacy, *Crawshay v. Maule*, 1 Swanst. 517, n. See Shelford on the Law of Lunatics, pp. 566—571, 2nd edit. A decree for the dissolution of a partnership was made in consequence of the lunacy of one of the partners, *Leaf v. Coles*, 1 De G., M. & G. 171; *Sander v. Sander*, 2 Coll. 276. Where a person, being a member of a copartnership firm, is found a lunatic by inquisition, the Lord Chancellor may dissolve the partnership, and the committee may convey the partnership property, 16 & 17 Vict. c. 70, s. 123.

Copartnership.

Lunacy.

On a bill to dissolve a partnership on the ground of the lunacy of a partner, the court will not make its decree retrospective, even to the filing of the bill, still less to the time when the defendant first became incapable of attending to the business, *Besch v. Frolick*, 1 Phill. C. C. 172. The actual insanity of a partner is not itself a dissolution of the partnership, but there must be a decree for dissolution. Such a decree, notwithstanding actual insanity proved to have existed before the filing of the bill, will not be made in a disputed case without further inquiry whether, at the time when the relief is sought, the party is in such a state of mind as to be able to conduct the business of the firm in partnership with the other members, according to the articles of partnership; and it seems that the affirmative of such issue would then lie with the party who had been of unsound mind. Insanity existing when the relief is sought is good ground for a dissolution, *Anon.*, 2 Kay & J. 441.

The bankruptcy of either party also operates as a dissolution of the partnership, but this dissolution does not take place until the party is actually declared a bankrupt, *Fox v. Hanbury*, Cowp. 449; *Ex parte Cobham*, 1 B. C. C. 576; *Bolton v. Puller*, 1 B. & P. 539.

Bankruptcy.

A partnership may likewise be dissolved by the award of arbitrators, if the dissolution of the partnership be a matter of dispute at the time of the reference of all matters in difference between the partners, *Green v. Waring*, 1 W. Bl. 475. But one partner has no implied authority to bind his copartner by a submission to arbitration made without his assent. See *Hutton v. Royle*, 3 H. & N. 500; 27 L. J., Exch. 486; Russ. on Arbitration, pp. 23, 24, 2nd ed. It has been held, that the marriage of a *feme sole* operates a dissolution, because it has the effect of introducing a stranger into the concern, *Nerot v. Burnand*, 4 Russ. 260.

Award of arbitrators.

14. On the dissolution of a copartnership, whether by death, bankruptcy or agreement of the parties, the copartnership deed ought to contain particular provisions as to the continuing the business, the distribution of the property, and winding up of the accounts. Where there is a stipulation that upon the death of one partner the business shall be carried on for the benefit of his representatives, it does not follow that such a provision extends to the admission of the repre-

Consequences of dissolution.

Representatives, how entitled.

<u>Copartnership.</u>	representatives into the partnership; nor can a surviving copartner, unless it be expressly stipulated, claim an allowance for the trouble of carrying on the trade for the benefit of the representatives of the deceased partner, <i>Burden v. Burden</i> , 1 Ves. & B. 170. In the case of bankruptcy, the assignees of the bankrupt partner become tenants in common with the solvent partner, <i>Fox v. Hanbury</i> , Cowp. 449; and no agreement between the parties can prevent the right of the assignees from attaching, <i>Wilson v. Greenwood</i> , 1 Swanst. 471; <i>S. C.</i> 1 J. Wils. 223. But the assignees cannot continue the trade without the consent of the other parties, <i>Hague v. Rollenston</i> , 4 Burr. 2174; <i>Wilson v. Greenwood</i> , <i>ub. sup.</i> ; <i>In re Wait</i> , 1 Jac. & Walk. 609; although they are entitled to a share of the profits arising from the capital of the bankrupt, as long as it continues in the business, <i>Crawshay v. Collins</i> , 15 Ves. 218; and also to any share agreed to be paid into the business by the solvent partner, <i>Akhurst v. Jackson</i> , 1 Swanst. 85.
Assignees tenants in common with solvent partner.	
Assignment of partnership property.	It is usually agreed that the parties continuing in the trade should pay to the retiring partner, or the executors of the deceased partner, the value of his share in the partnership stock which is assigned to them; but it has been held that such a stipulation is void as against the assignees in a case of bankruptcy, <i>Wilson v. Greenwood</i> , 1 Swanst. 471. In the absence of express stipulation, a continuing partner has no right to insist on a valuation to him of the partnership property, <i>Crawshay v. Collins</i> , 15 Ves. 226.
Division.	Where the articles of copartnership stipulate that there shall be a division of the property, a sale and not a specific division is intended, <i>Rigden v. Pierce</i> , 6 Madd. 353; <i>Cook v. Collingridge</i> , 1 Jac. 607. The interest of an outgoing partner may be assigned, <i>Kennedy v. Lee</i> , 3 Mer. 441; but he will not be precluded from carrying on the same trade, unless it be expressly so stipulated, <i>Farr v. Pearce</i> , 3 Madd. 74; but if a party stipulate that on such dissolution he will quit the trade, he will not be at liberty to dissolve the partnership and set up the same trade elsewhere, <i>Cooper v. Watlington</i> , 2 Chitt. 451.
Retiring partner at liberty to carry on the same trade.	Notwithstanding the dissolution, all the partners are jointly liable for the debts and engagements of the firm contracted during the partnership; it is usual, therefore, for a deed of indemnity to be given to the retiring partner, which is binding on the covenantor, but will not affect the rights of creditors, <i>Bedford v. Deakin</i> , 2 B. & Ald. 210. Sometimes it is agreed to give an annuity to a retiring partner, or to the widow of a deceased partner, in lieu of his share in the profits; but care must be taken so to frame the agreement, that it be not made dependent upon the profits, otherwise it will make the party liable.
Liabilities of retiring partner.	
Notice of dissolution.	In order to exempt an outgoing partner from all future liability, notice of the dissolution should be given not only in the Gazette, but expressly to all the persons with whom the parties have had dealings.
Arbitration clause.	15. Deeds of copartnership frequently contain a covenant, that

disputes shall be referred to arbitration; but an action cannot be maintained against a person refusing to nominate an arbitrator, unless there be an express stipulation, showing this to be the intention of the parties, *Tattersall v. Groote*, 2 B. & P. 131. See Collyer on Partnership, Ch. III. s. 1; 7 Jarman's Conv. pp. 34, 83, 350.

16. Articles of copartnership under seal require a deed stamp of Stamp duty. 17. 15s., and where the same shall contain 2160 words or upwards then the further progressive duty of 10s. for every entire quantity of 1080 words over and above the first 1080. (See further as to copartnerships, Gow on Partnership, and Collyer on Partnership.)

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No. CCCXVI.

Articles of Copartnership between Two Tradesmen. (General Precedent.)

No. CCCXVI.

*Between
Tradesmen.*

This Indenture made the day of Between A. B. of &c. of the one part and C. D. of &c. of the other part *witneseth* That the said A. B. and C. D. have mutually agreed and by these presents do agree to become copartners together in the art or trade of for their mutual benefit and at their common risk which said copartnership shall be carried on under the firm (a) of A. B. and C. D. and shall continue from the date (b) of these presents for and during the term of years subject nevertheless to the sooner determination thereof as hereinafter mentioned *And* to that end and purpose he the said A. B. hath on the day of the date of these presents delivered in as stock the sum of £ and the said C. D. the sum of £ to be used laid out and employed in common between them solely (c) for the management of the said trade to their utmost benefit and advantage *And* it is hereby agreed between the said parties and the said copartners each for himself and for his respective executors and administrators doth covenant promise and agree with the other of them his executors and administrators by these presents in manner following (that is to say)

And deposit
certain sums
as stock.

1. That the said trade or business shall be managed or carried on at or such other place or places as the said parties shall agree upon.

Trade to be
carried on
at .

2. That they the said copartners shall not nor will at any time hereafter during the continuance of the said copartnership use

Neither party
to carry on any
separate trade.

(a) As to the style of the firm, see Pref. sect. 5.

(b) As to the time of commencement and duration, see sect. 4.

(c) As to this restriction, see sect. 10.

No. CCCXVI. exercise or follow the trade of aforesaid or any other
 Between
 Tradesmen. trade (a) whatsoever to their private benefit or advantage.

Be faithful, &c.
 to each other.

*

3. That each of them the said A. B. and C. D. shall and will from time to time and at all times during the continuance of this copartnership be faithful and just to each other in all their dealings and transactions and do their best endeavours by all means possible to the utmost of their skill and power to promote their joint interest profits benefit and advantage and truly employ buy sell and merchandize with the capital stock aforesaid and the increase thereof in the trade of aforesaid without any sinister or fraudulent intentions whatsoever (b).

Rent, &c. of
 premises to be
 borne equally.

4. That they the said copartners shall and will from time to time during the said term pay bear and discharge equally between them the rent and taxes of the shop which they the said copartners shall hire or rent for the joint exercising or managing the trade as aforesaid And that all gains profits and increase arising from the said joint trade shall from time to time during the said term be equally (c) and proportionably divided between the said copartners share and share alike And also that all such losses as shall happen in the said joint trade by bad debts or otherwise without fraud or covin or wilful default of either of the said parties and all insurances salaries wages charges and other expenses and payments whatsoever relative to the said joint trade shall be paid and borne equally between them the said parties.

Profits equally
 shared ;

and losses, &c.
 to be equally
 sustained.

Neither party
 to take, &c.
 clerks, &c.

5. That neither of the said parties shall take or discharge any apprentice clerk servant or labourer without their mutual consent and that all apprentice fees to be received by them or either of them by way of premium shall be carried to the joint account.

Nor execute
 bonds, &c.
 without
 consent.

6. That neither of the said parties shall or will sign (d) execute

(a) As to this restriction, see sect. 10.

Money brought
 by either party
 to bear interest ;

(b) If necessary, say "That in case either of the said parties shall with the consent of the other of them lend or bring into the copartnership concern any sum or sums of money over and above his share in the capital thereof he shall be entitled to receive interest for the same after the rate of &c. from the time of such advance to the time of repayment thereof by and out of the copartnership funds before any division of the gains and profits shall be made between the said parties. And that the sums so advanced shall be a lien upon the capital of the said copartnership but that the repayment thereof shall not be made without six months' previous notice in writing being given by the party requiring the same to be repaid." As to the necessity of this provision, see sect. 8.

and be a lien
 on the partner-
 ship stock.

(c) As to the necessity of this clause, see Pref. sect. 6.

(d) As to the liabilities of partners for the acts of each other, and the necessity of this provision in respect of the parties themselves, see Pref. sect. 11.

or deliver any bond judgment or warrant of attorney to enter up judgment nor give sign indorse draw or accept any bill of exchange or promissory note nor subscribe any policy of insurance nor release (a) or compound any debt due to them whereby the joint trade can be affected in any manner howsoever without the consent of the other of them being first had and obtained.

No. CCCXVI.

*Between
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7. That neither of the said parties shall or will at any time during the continuance of this copartnership without the consent of the other of them lend any money or give credit nor use or employ the firm of the said copartnership in any transaction of notes or bills of accommodation in any manner howsoever nor become bail to the sheriff nor be security for any person or persons whomsoever nor speculate in the public funds nor enter into any other speculation whereby his capital stock or private estate may be prejudicially affected nor assign (b) nor otherwise dispose of his share in the joint trade [except that each may introduce a son or nephew &c. (*as the case may be*) as a partner into the said business subject nevertheless to the several terms and conditions of the copartnership and without prejudice to the interest of the other party].

Nor lend
money, &c.

8. That all contracts and engagements checks or drafts upon bankers bills of exchange and other securities orders bills of parcels receipts and all other matters relating to the said trade shall be made given and taken in the name of the firm as the said parties shall mutually agree upon.

Bills, &c. in
the name of
the firm.

9. That each of the said copartners shall punctually pay his separate and private debts and indemnify the copartnership effects from all claims on account thereof.

Each party to
pay his se-
parate debts.

10. That there shall be had and kept proper books of account (c) wherein each of the said copartners shall duly enter and set down as well all money by him received paid and laid out in and about the management of the said trade as also all wares goods commodities and merchandizes by them or either of them bought and sold upon the copartnership account and all other matters and things whatsoever to the said joint trade in anywise relating or appertaining together with all such circumstances of names times and places as may be necessary or useful for the better manifestation of the state and proceedings of the said business which said books together with all letters bonds bills papers and writings whatsoever relating to the said joint

Books of ac-
count to be
kept.

(a) As to the rights of partners to release debts, unless thus restricted, see *ante*, COMPOSITION, Pref. sect. 8, p. 563.

(b) As to this stipulation, see Pref. sect. 7.

(c) As to the obligation to keep accounts, see Pref. sect. 10.

No. CCCXVI. trade shall be kept in the office or counting house at so
Between that either of them may have free access thereto without any
Tradesmen. interruption by the other.

Each party to draw out £ per month for his private use. 11. That each of them the said parties shall be at liberty (a) to draw out of the said partnership effects for his own use and benefit the sum of £ per month and no more And that the monthly sums so to be taken out by each of the said copartners shall go and be considered as part of his share of the clear yearly gains and profits of the said copartnership And in case the monthly sums so to be taken out shall at the end of the year exceed the sum which the party so taking out the same shall be entitled to at the end of that year then and in that case such party shall be considered as a debtor for such excess to the said copartnership.

No benefit of survivorship to either party. 12. That no benefit (b) or advantage of survivorship shall accrue to either of the said parties by the decease of the other of them but that each shall have a sole and separate interest in the capital by him brought in.

Annual accounts. 13. That the said copartners on the day of in every year (c) or oftener if need require upon the reasonable request of either of them shall make yield and render each to the other a true just and perfect account of all profits and increase as also of all payments receipts and disbursements and all other things whatsoever done or suffered by them in the said joint trade and on the delivery and adjustment of such account shall and will pay and deliver each unto the other their equal share of the clear profits so made as aforesaid.

Division of profits.

Dissolution of partnership. 14. That in case either of the said parties shall do anything contrary to the articles of copartnership herein contained whereby the said joint trade shall be in anywise affected (d) it shall be lawful for the other of them within days after such act or other default (e) to give to the party so offending (f) notice in

(a) Or, if it be so agreed, say "every months to draw out of the stock of the said copartnership account for his own private current expenses any sum or sums of money not exceeding the interest on his share of the capital of the said stock to be advanced by him as aforesaid after the rate of 5*l.* per cent. per annum and so as the capital of the said copartnership amounting to £ as aforesaid shall not at any time be diminished."

(b) See Pref. sect. 9.

(c) As to this clause, see sect. 12.

(d) And, if either of them be a *feme sole*, add "or shall marry." See Pref. sect. 13.

(e) "Or immediately after such marriage."

(f) "Or marrying."

writing of his desire to dissolve the said copartnership and it shall then cease and determine in consequence of that notice in the same manner as if the said party were deceased.

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15. That in case of any dissolution of the copartnership whether by the effluxion of time by death agreement or otherwise they the said copartners each to the other or in case of the death of either of them the surviving party to the executors or administrators of the deceased partner shall and will make a true just and final account of all things as aforesaid and adjust and wind up the partnership accounts And upon the making such final account they the said parties shall forthwith pay or take good order for the speedy payment of all debts due and owing by them on their joint account in respect of the said copartnership and shall part (a) and divide all and every the monies debts stock goods wares merchandize and effects belonging due and owing to the said copartnership or joint business between the said parties And that the said parties shall give mutual bonds in a sufficient penalty for the payment of their parts or shares of the debts owing by them as aforesaid and for the saving harmless and indemnifying each other and their respective heirs executors and administrators of and from the payment of each other's part or share of such debts and of and from all costs charges and expenses on account thereof And that they shall immediately upon such partition and division as aforesaid well and sufficiently convey and assign unto each and empower each to recover and receive his respective part and share of all such debts and sums of money then due and owing to or on account of the said copartnership.

The surviving
or continuing
partner to
make out
accounts.

16. *Provided nevertheless* that if at the determination of such copartnership either of the said parties shall be minded and desirous of retiring altogether from the said trade in that case the party who is desirous to continue and carry on the same shall be at liberty to purchase (b) the share of the retiring party at a valuation to be made by two indifferent persons one of them to be chosen by each party or his respective executors or administrators or by an umpire to be chosen by such two persons which valuation shall be taken and considered as the price or value thereof and if within the space of six calendar months after

Provision as to
continuing the
trade after
dissolution of
partnership.

(a) As to what is intended by a division, see Pref. sect. 14.

(b) As to the necessity of this clause, to enable a continuing party to have the valuation made to him, see sect. 14.

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such valuation such continuing partner shall well and truly pay unto such retiring partner the amount or value so to be ascertained that then and in such case the part or share of such retiring partner shall become the absolute property of the party so paying for the same.

Notice of dis-
solution to be
advertised.

17. That at the end or sooner determination of the said copartnership by any of the means aforesaid (a) notice thereof shall be given in the London Gazette and also to all the correspondents of the said copartnership by circular letters under the hands of the said A. B. and C. D.

Arbitration
clause.

18. *And lastly* it is hereby declared and agreed that if any doubt difference or dispute shall at any time arise between the said parties touching the construction of these presents or any clause matter or thing herein contained or relating to the management and settlement of the said joint trade and copartnership and such doubt question or difference shall not be fully decided between them within one calendar month after the same shall arise then as often as the same shall happen such case or matter shall be referred to the arbitration of two indifferent persons to be chosen by the said parties their executors or administrators or of an umpire to be appointed by the two nominees the award of which said arbitrators or umpire shall be final conclusive and binding on the parties between whom such question shall arise And (b) in case either of the said parties his executors or administrators shall refuse or neglect to appoint or name such arbitrators for the space of days after he shall have been required so to do it shall be lawful for the referee of the party so requiring the nomination to appoint an arbitrator of himself and their decision or award shall be as binding on the said parties to these presents their respective executors or administrators as the award of such two arbitrators or their umpire would have been if they had been regularly chosen (c)

(a) As to the necessity of this notice, see Pref. sect. 14; and for a more particular provision, see *Copartnership between Bankers*, Art. 29.

(b) As to the necessity of this clause, see sect. 15.

(c) *The following form is taken from Russ. on Arbitration*, p. 726, 2nd edit. See Id. pp. 65, 159, 164:—

Arbitration
clause in deed
of partnership.

“And the said A. B. and the said C. D. do each of them for himself his executors and administrators covenant promise and agree to and with the other of them his executors and administrators that if at any time or times during the copartnership or at or after any determination thereof any variance dispute doubt or question shall arise happen or be moved between the said parties or either of them their executors or administrators in for about or

And further it is agreed that such submission and reference shall from time to time be made a rule of her Majesty's Court of at Westminster *In witness &c.*

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Copartnership Deed between a Principal Partner and Two Incoming Partners.

*Incoming
Partners.*

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part and E. F. of &c. of the third part Whereas [recite demise to A. B. of the premises where the business was then carried on] And whereas it hath been mutually agreed that each of them the said C. D. and E. F. shall pay unto the said A. B. one third of the value of the said lease fixtures stock debts and effects of the said A. B. according to a fair valuation to be made thereof and shall be entitled to a proportionate share of the profits of the said trade And it hath been further agreed that the said C. D. and E. F. should not be required to pay down their respective thirds to the said A. B. but that such thirds with

Parties.

Recitals.

Incoming partners to take their shares of the stock at a valuation;

and to give a bond for payment.

touching the consideration of these presents or the joint concern or copartnership or any covenant agreement clause matter or thing herein contained or in the construction hereof or in anywise relating hereto then every such variance dispute doubt or question shall be referred to and be resolved and determined by two fit and indifferent persons to be elected and chosen one by each of the said partners within twenty days next after such variance dispute doubt or question shall arise happen or be moved with power to the arbitrators to elect an umpire in case of dispute and that each of the said partners his executors and administrators shall abide by perform and keep the award and determination of the arbitrators or of their umpire without any further dispute or trouble whatsoever And that if either the said A. B. or C. D. his executors or administrators shall neglect or refuse to appoint an arbitrator pursuant to the above provisions for twenty-one days after the other of them shall have appointed such arbitrator on his part and shall have served a written notice requiring the party so neglecting or refusing to make such appointment* the party so neglecting or refusing shall pay to such other the sum of £ by way of liquidated damages for such neglect or refusal.

Provision for liquidated damages for refusing to appoint an arbitrator.

[Or this clause may be inserted after the asterisk instead of the provision for liquidated damages] then the arbitrator appointed by the party serving such notice shall at the request of such party proceed to hear and determine such matters in difference as if he were an arbitrator appointed by both parties for that purpose and that if after the said arbitrator shall have been so requested as aforesaid either party shall revoke or attempt to revoke the authority of the said arbitrator such party shall pay to the other of them £ as liquidated damages and the said arbitrator if requested shall proceed to hear and determine the said matters notwithstanding such revocation or attempted revocation.

On refusal single arbitrator may act alone.

Liquidated damages for revocation.

Arbitrator to proceed notwithstanding revocation.

- No.CCCXVII. interest should be secured to the said A. B. by the respective bonds of them the said C. D. and E. F. and that he the said A. B. should have liens upon the respective shares of the said C. D. and E. F. in the effects and profits of the said copartnership *And whereas [recite execution of the bonds by C. D. and E. F.] And whereas* the said lease fixtures stock in trade debts and effects of the said A. B. have been valued at the sum of £ a copy of which valuation signed by each of them the said A. B., C. D. and E. F. hath been this day delivered to the others of them *And whereas* for the more clearly defining the intentions of the said parties they have agreed to enter into the covenants stipulations and agreements as hereinafter expressed
- Agreement to enter into mutual covenants, &c.* *Testatum.* *Now &c.* that in pursuance &c. and in consideration of the mutual trust and confidence which they the said A. B., C. D. and E. F. repose in each other each of them the said A. B., C. D. and E. F. for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the others and other of them in manner following (that is to say) :
- Agreement to become partners.* 1. That they the said A. B., C. D. and E. F. shall and will become and remain joint traders and copartners in the trade or business of for and during the term of years Subject nevertheless to being sooner determined in manner hereinafter mentioned.
- Where to carry on trade.* 2. That the said business shall be carried on in where it is now carried on or at or in any other place as the said parties or any two of them of which the said A. B. shall be one shall agree upon and that the style or firm of the said copartnership shall be A. B. and Co.
- Style of the firm.* 3. That the capital or joint stock shall consist of the said lease fixtures debts and effects of the said A. B. now employed in the said trade or business and shall be considered (subject to the payment of the several sums owing by the said C. D. and E. F. to the said A. B.) as brought in by the said copartners and that the same shall at all times during the continuance of the said term be employed solely for the purposes of the said joint trade.
- Capital stock.* 4. That the said several sums of £ and £ secured to the said A. B. by the said hereinbefore recited bonds of the said C. D. and E. F. shall be raised and paid out of the shares of the said C. D. and E. F. in the profits of the said trade or copartnership business as the same shall from time to time accrue or shall be paid by each of them the said C. D. and E. F. out of his separate estate.
- Sums secured to the principal partner.* 5. *Provided always* that if the share of the said C. D. and

E. F. of the annual profits of the said copartnership business shall exceed the sum of £ after paying the interest which upon every annual rest shall be due or owing to the said A. B. on the said bonds then each of them the said C. D. and E. F. shall be entitled to receive the excess for his own use And the said A. B. shall be and is hereby precluded from proceeding either at law or in equity upon the said bonds of the said C. D. and E. F. during such time as the said copartnership shall continue and he the said A. B. shall be receiving the annual sum of £ in reduction of the said principal sum due upon the said bonds and all interest which upon every annual rest shall be due in respect of such principal money.

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Partners.*

6. *And it* is hereby further agreed that the said A. B. and his family shall during the continuance of the said copartnership be entitled to reside in the house upon the premises in afore-said in the same manner as he and they have hitherto been accustomed to do without paying any rent or taxes or any other outgoings for repairs insurance or otherwise payable for or in respect of the same.

Principal part-
ner to reside on
the premises
rent-free.

7. That the rents taxes repairs and insurances of the said premises and stock in trade salaries and wages of shopmen clerks and servants together with the expense of coals candles and other expenses incidental to the said joint trade and also all casual losses of the said copartnership property business shall be defrayed and borne by and out of the capital and profits of the said copartnership.

Rent, &c. to be
paid out of the
copartnership.

8. That no apprentice clerk servant labourer or other workman shall be taken or discharged without the consent of the others of the said parties.

9. That all monies which shall be received with apprentices shall be brought into the joint stock.

10. That each of them the said C. D. and E. F. shall for his extra service and attention to the affairs of the said copartnership as hereinafter mentioned be allowed the annual sum of £ beyond his share of the profits and shall be permitted to draw for the same by monthly proportions on the day of every calendar month.

Incoming part-
ners to draw out
£ per
month.

11. That the said A. B. C. D. and E. F. shall be entitled to the clear gains and profits arising from the business of the said copartnership in equal shares and proportions and shall receive and divide the same at the times and in the manner hereinafter mentioned.

Profits to be
equally di-
vided.

- No. CCCXVII. 12. That on the day of and the day of
Incoming Partners. — in every year during the continuance of the said copartnership
 Annual rests. a full and general account shall be made of the stock in trade
 monies effects debts credits and demands belonging or due and
 owing to or from the said joint trade and a rest and balance be
 struck concerning the same with a view of ascertaining the state
 of the said trade which accounts rests and balances shall be fairly
 entered in proper books to be provided for that purpose and a
 summary or balance sheet shall be delivered to each of the said
 parties.
- Taking out shares. 13. That the said A. B. shall take out his third part or share
 for his own use and the several third parts or shares of the said
 C. D. and E. F. shall be applied first in payment of the interest
 due upon the said bonds to the said A. B. then next in reduc-
 tion of the principal sum of £ due upon the same bonds
 to the extent before mentioned and the surplus if any shall be
 paid to the said C. D. and E. F. for their own use.
- To keep books of account. 14. That books of account shall be kept as the said joint trade
 shall require wherein all transactions and matters which in any
 manner affect or concern the same shall be correctly entered so
 as to manifest the true state of the said trade.
- Books, &c. to be kept at the counting-house. 15. That all books letters securities and writings whatsoever
 which concern the said joint trade shall be kept at the counting
 house and be open to the inspection of the said parties and their
 respective representatives after the decease of either of them at
 all times.
- Cash, &c. to be deposited with bankers. 16. That all cash drafts checks and bills belonging to the said
 copartnership shall be deposited with Messrs. I. M. and C. M.
 as the bankers of the said A. B. and Co.
- Incoming partners to devote their whole time to the business, &c. 17. That both the said C. D. and E. F. shall devote their
 whole time exclusively to the affairs of the said copartnership
 and shall not nor will carry on or be concerned in any other
 trade whatsoever but that the said A. B. shall not be expected or
 required to give any more of his time or attention to the said
 copartnership concerns than he shall think fit.
- Parties to be true and faithful to each other. 18. That each and every of them the said parties shall be just
 true and faithful to and with each other in all receipts payments
 accounts and transactions whatsoever touching or anywise con-
 cerning the said copartnership trade.
19. That neither of them the said parties shall employ any of
 the monies goods or effects of or belonging to the said copart-
 nership except for the benefit of the joint trade and in the usual

course thereof nor suffer the said joint estate or trade to be charged with his private debts or engagements. No.CCCXVII.

20. That all contracts in anywise concerning the said joint trade and all checks and drafts upon bankers bills of exchange and promissory notes shall be made given and taken respectively in their joint names and as they shall jointly appoint *Provided nevertheless* that promissory notes and bills of exchange shall be drawn only by the said A. B. and that the said C. D. and E. F. shall be wholly disqualified from drawing accepting or indorsing or giving any note or notes bill or bills or other security or securities And that he the said A. B. shall not draw accept indorse or give any note &c. without the consent of the other parties.

Incoming Partners.

Contracts, &c. to be made jointly.

Notes, &c. to be drawn by principal partner only.

With consent of the other parties.

21. That neither of the said parties shall lend or give credit contrary to the consent in writing of the others of them nor release or compound for any debt due to them or their joint or partnership account nor deliver up any security belonging thereto without receiving the full amount or value thereof nor sign any letter of licence nor engage in any speculation whereby his capital stock or his private estate may be put in jeopardy nor assign or mortgage his share nor become bail or surety for any person or persons whomsoever nor do or suffer to be done any act matter or thing whatsoever whereby the said joint trade or any part thereof shall or may be in anywise altered sued extended taken in execution impaired charged or encumbered in any manner howsoever.

Neither party to compound debts, &c. without consent of the other.

22. That if at any time during the continuance of the said copartnership the said C. D. shall draw accept or indorse any notes or bills of exchange or other securities contrary to the provision aforesaid or if the said C. D. shall at any time apply to his own separate use or lend any of the stock monies debts and effects of the said copartnership to the amount of £ or upwards without the consent of the other of them the said parties in writing given for that purpose or enter into any statute judgment bond or recognizance or become bail or surety with or for any person or persons whomsoever or release or compound for any debts due to the said copartnership or assign or mortgage his share without such consent as aforesaid or if the stock monies debts or effects of the said copartnership or any part thereof shall be seized attached or taken in execution for or on account of the private or separate engagements of him the said C. D. or if the said C. D. shall do or knowingly suffer to be

Particular provision as to the incoming partners.

No. CCCXVII. done any other act matter or thing contrary to the true intent and meaning of these presents Then and in either of such cases he the said C. D. shall immediately from thenceforth forfeit and lose all his part and share of and in the whole copartnership stock debts and effects and the copartnership shall as to the said C. D. be thereupon dissolved And if at any time the said E. F. shall draw &c. [*similar covenant as to E. F.*]

Dissolution for misconduct.

23. That if either of them the said C. D. and E. F. shall absent himself from the said business or shall refuse to assist in the conduct thereof or to keep up a regular communication with his copartners when requisite or expedient it shall be lawful for the said A. B. upon giving months' notice after such default or offence to dissolve the partnership as to the persons so offending and the partnership shall thenceforth absolutely cease and determine in the same manner as if he were deceased And in this latter case the like final account shall be made and taken as is hereinafter directed upon the death of either of the said parties.

Neither party to buy or sell without consent of the others.

24. That neither of the said parties shall purchase or sell any goods without the consent of the other of them and in case of his so purchasing or selling the other of the said parties may be at liberty to assent to or dissent from the same at any time within the space of days after notice thereof and in case of such dissent the party so purchasing and selling shall bear and sustain any loss which shall happen thereby to the said copartnership.

Provision as to the death of principal partner;

25. That in case the said A. B. shall depart this life at any time during the continuance of the said term the share of the said A. B. of and in the said copartnership concern shall go and belong to such partner and partners and in such shares and proportions as the said A. B. shall by his last will and testament or any writing in the nature of or purporting to be his last will and testament direct or appoint and in default of such direction or appointment to the executors or administrators of the said A. B.

and of incoming partners.

26. That in case either of them the said C. D. and E. F. shall die at any time during the continuance of the said copartnership the surviving or continuing partners shall pay or cause to be paid to the executors or administrators of the said deceased partner the value of his share or shares in the said copartnership (making all just allowances for any balance due from either of them the said C. D. and E. F. to the said A. B.) by equal in-

instalments the first instalment therein to be paid at the end of No. CCCXVII.
 months from the death of the said C. D. or E. F. with Incoming
 interest after the rate of £ per annum such instalments to Partners.
 be respectively secured by bills of exchange to be accepted by
 the surviving partner or partners as the case may be.

27. That in case of the death of either of the parties herein- Surviving part-
ner to execute
bond indem-
nity.
 before provided for the surviving partner or partners shall exe-
 cute to the executors or administrators of the deceased party so
 dying their or his bond for indemnifying the estate and effects
 of such deceased partner or partners of from and against all
 debts and demands in respect of the said joint trade upon the
 delivery of which bonds the executors or administrators of the
 party so dying shall convey and assign unto the surviving part-
 ners or partner their or his executors &c. his share of and in the
 said copartnership stock debts and effects.

28. That in every such case the continuing partners or partner
 shall be entitled to the shares or share of the partner so dying
 of and in the said copartnership stock and of and in the gains
 and profits thereof in proportion to their respective shares and
 interests.

29. That at the expiration of or other sooner determination of Expiration of
term.
 the term if the said A. B. shall be desirous to continue the said
 trade he shall be at liberty to take the share or shares of the said
 C. D. and E. F. in the said capital stock and effects at the
 amount which the same shall be valued at by two indifferent
 persons &c. [see *last Precedent*, Art. 16] making all due allow-
 ances &c. and the amount of such valuation shall be paid in
 manner following *i. e.* one third with interest after the rate of
 &c. one third at the end of &c. and the remaining one third at
 the end of &c. And the party continuing shall give the like
 bond of indemnity as hereinbefore is provided for in the event
 of the death of either And in case the said A. B. shall decline
 taking the said copartnership stock then the said C. D. and in
 case of his declining the said E. F. shall be at liberty to take
 the same in the same or like manner and upon the same terms
 and conditions as aforesaid in all respects But in case all the
 said parties shall decline to take the said copartnership stock
 then the same shall be sold by public auction or private con-
 tract as shall be agreed on by the said parties and the money to
 be produced by such sale after paying the debts due and owing
 from the said copartners on the said joint account and receiving
 all the debts owing to the said trade as the same shall from time

No. CCCXVII. to time be collected shall be divided between the said parties according to their respective proportions as aforesaid in the said joint stock [*clause for mutual bonds &c. see last Precedent, Art. 15, and also clause for arbitration and notice, Art. 17, 18*]. *In witness &c.*

Incoming Partners.



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*Between
Manufacturers.*

Deed of Copartnership between Two Manufacturers, where One of them is a dormant Partner.

Obs. As to the liabilities of a dormant partner, see Pref. s. 1.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* the said A. B. hath at his own expense erected a manufactory at L for the making of cotton and hath entered into treaty with the said C. D. for the admitting him into copartnership with him the said A. B. in a joint and equal concern in the manufactory and premises for their mutual benefit and risk and it hath been proposed and agreed that the said A. B. should on his part bring in and produce as a further capital for the said joint concern good bills to the amount of £ payable within months next ensuing and that the said C. D. should on his part bring in and produce the sum of £ as and for his equal half part of the money which the said A. B. hath expended in erecting the said buildings and setting forward the said cotton manufactory and other expenses incidental thereto and that he should bear an equal part of all expenses to be hereafter incurred therein and in promoting forwarding and carrying on the said concern for their mutual benefit *Now this Indenture witnesseth* That in pursuance of the said agreement and for and in consideration of the sum of £ by the said C. D. to the said A. B. paid the receipt &c. He the said A. B. *Doth* by these presents admit the said C. D. to one equal half part of all the said buildings manufactory and concern and of the lease whereby the same premises are held by the said A. B. and to the one equal half part of all profits gains benefit and advantage increase and emolument thereof and subject to an equal half part of all losses payments and expenses arising therefrom and incident thereto respectively And in further pursuance of the said agreement and for and in consideration of the sum of £

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Between
Manufacturers.

so secured to the said joint concern by the said bills of exchange brought in by the said A. B. as aforesaid which he the said C. D. doth hereby acknowledge he the said C. D. doth accept and take the said moiety or half part of and in the said joint concern and premises to which the said A. B. hath admitted him and doth hereby agree to be connected and concerned with the said A. B. subject as aforesaid upon all the several terms covenants and conditions hereinafter expressed and declared of and concerning the same.

1. That they the said A. B. and C. D. will become and continue copartners together in the said manufactory and in the said buildings and premises and in all things incidental to the carrying on and promoting the same and in the trade arising and to arise therefrom from the day of 18 for and during the term of years then next ensuing in case the said parties hereto shall so long live.

2. That the said joint concern shall be carried on under the firm at (a).

(a) Where there are several dormant partners, who advance the capital, and one acting partner, who brings in no part of the capital, instead of the preceding, to the end of Art. 2, say, "*This Indenture, &c. Between A. of &c. of the first part B. of &c. of the second part C. of &c. of the third part and D. of &c. of the fourth part Whereas the said D. hath by his skill and ingenuity invented a mode of manufacturing but not having the means of bringing his invention into use without associating others in the concern the several parties A. B. and C. have agreed to advance the necessary capital and to become partners with him upon the terms and conditions hereinafter mentioned Now this Indenture witnesseth That in pursuance of &c. and in consideration of the mutual trust and confidence which the several parties hereto have and repose in each other each of them the said parties for himself and his executors and administrators doth hereby covenant &c. with &c. the others of them respectively by these presents in manner following (that is to say) That on &c. they the said parties shall and will become copartners and be concerned together in the trade and business of manufacturing and vending in the name of the said D. for and during the term of years and according to the conditions provisoes and terms of agreement hereinafter contained and expressed That for providing a competent fund for the purpose of erecting and building a manufactory and purchasing the necessary utensils and articles and for the effectually carrying on the said joint trade concern or business they the said A. B. and C. have agreed to bring in together and to make up a capital of £ in the proportions following (that is to say) the said A. the sum of £ the said B. the sum of £ and the said C. the sum of £ making together the sum of £ and that the said capital shall be considered as the property of them the said A. B. and C. and*

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A. B. to give
his whole time.

3. That the said A. B. shall and will devote the whole of his time and skill with the most assiduous attention and diligence and with such assistance as shall be deemed necessary by the said parties in and towards the affairs and business of the said manufactory and joint concern and in the improvement management and extension thereof to the best advantage and for the (a) mutual benefit of both of the said parties and shall not absent himself therefrom nor neglect the same nor shall nor will openly or covertly directly or indirectly carry on the same manufactory either by himself separately or in partnership or connexion with any other person or persons whomsoever either for the like or any other concern whatsoever And that it shall not be neces-

in consideration of the true and faithful services to be rendered by and derived from the said D. in and about the manufacturing and making of it is hereby agreed that no capital shall be required to be advanced by him but that all the profits gains and interest of and in the said copartnership trade shall during the continuance of their said joint trade be divided nevertheless into equal parts and shares unto whereof the said A. shall be entitled unto other whereof the said B. shall be entitled unto other whereof the said C. shall be entitled and unto other whereof the said D. shall be entitled That the said partnership concern shall be managed and carried on and all purchases sales bills of parcels orders notes letters bills receipts payments contracts securities dealings and transactions which shall be made given or taken for any matter or thing concerning the same shall from time to time be so made given taken and entered into in the name of the said D. alone And that all monies payments securities and dealings in general relating to the said joint concern shall be daily charged and entered by the said D. in proper books for that purpose and in particular that a book or books shall be kept for the entry of the account of cash to be received and paid And that the said D. shall during the continuance of the copartnership be the keeper of the cash bonds bills notes and other securities belonging to the said joint trade and shall once in every month balance his accounts in such manner as to exhibit the true state and condition of the said joint concern And that the said cash book shall be kept in the counting house of the said trade and be open to the inspection of all the said partners in like manner as the other books of the said copartnership are agreed to be kept And if at any time any cash or bills or other securities on the copartnership account shall be received by any of them the said A. B. and C. the same shall be delivered to the said D. and in case default shall be made by any partner so receiving money in paying over the same as aforesaid for the space of days then and in every such case a sum of £ per cent. on the sum so received shall be charged against the defaulter by way of liquidated damages and be retained out of his share of the profits and be added to the capital for the general benefit of the joint concern That the said D. shall and will devote the whole &c." as above.

(a) "For the common benefit of all the said parties."

sary (a) for the said C. D. to take any part in the said joint trade otherwise than he shall think fit but that he shall at all times have free access to any and every part thereof and inspect into the payments receipts accounts engagements and all other matters relating to the same when and as he shall think it expedient.

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C. D. not
obliged to at-
tend to the con-
cern.

4. That the said concern shall be carried on for the (b) mutual and equal benefit and advantage and at the equal risk and loss of both the said parties.

5. That they the said parties shall and will be just and faithful to each other in all their respective dealings and transactions as far as relate to the said joint concern and shall and will mutually endeavour to promote the same for their mutual benefit.

To be faithful
to each other.

6. That they shall and will bear sustain pay and discharge all debts and obligations rents taxes purchases wages frauds impositions damages losses bad debts and all other incidental charges and expenses (c) in equal moieties out of the said joint stock and that the buildings utensils apparatus and all other the partnership property of a perishable nature shall at all times be insured out of the monies of the said copartnership business against loss or damage by fire in some one of the public offices of insurance in the cities of London and Westminster in the name or names of one or more of the said partners and the monies to be received from the office of insurance under the policy in the event of loss or damage by fire to the said copartnership shall with all convenient speed be laid out in repairing [*or "rebuilding," as the case may be*] all the said buildings &c.

7. That neither of the said parties shall or will at any time hereafter charge the account of the said copartnership with any other or more costs charges or expenses than such only as shall be pertaining thereto and as shall have been necessarily disbursed engaged for or incurred therein nor take or draw from

Not to charge
the partnership
account without
consent.

(a) "For the said A. B. and C. to take any part in the said trade otherwise than they shall think fit but that they shall at all times have free &c." *as above.*

(b) "For the joint benefit and advantage and at the joint risk and loss of all the said parties according to their respective shares and interests in the said concern."

(c) "According to their respective shares and interests in the said copartnership."

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the said copartnership any further sums of money or other effects and things whatsoever than such as shall be so necessarily disbursed or incurred and that without covin on any account or pretence whatsoever.

8. That neither of the said parties shall at any time release discharge or compound for any debt due to them on their joint account or any security given for the same without the consent of the others of them.

9. That neither of the said parties shall during the said term lend any money nor become co-obligor with or bail or other security for any other person or persons whomsoever either by bond bill note letter undertaking pledge promise agreement or in any other manner howsoever nor draw accept or indorse any bill of exchange or promissory note for any sum whatsoever nor sell assign or assure his (a) moiety or share of and in the same joint trade and manufactory or any part thereof to any person whomsoever nor sign and give any cognovit warrant of attorney judgment or other instrument for any consideration without the previous consent privity and approbation of the other of them first in writing for that purpose had and obtained.

Provision re-
stricted to the
partnership.

10. That these presents shall not be deemed or construed to create any further interest or other concern between the said parties of in or to any other estate or concern whereof or wherein they may be possessed or interested but only in the said joint concern hereinbefore specified and the property belonging thereto.

Monies brought
in.

11. That all monies which shall be advanced by either of the said parties to the said joint concern at the request and with the privity of the other of them and all sums which either of them shall with the privity and consent of the other of them suffer to remain in the said joint concern which by the rules herein prescribed he may be at liberty to draw out as part of his profits ascertained therein shall be passed to his credit in their books of account and he shall be entitled to interest thereon after the rate of £ per cent. per annum for so long a time as the same shall be so suffered to remain therein and be deemed and considered as a distinct and separate loan as if the same were borrowed of any other person and be accounted for and paid to him prior to any division of the profits of the said joint concern.

12. That all such monies brought in and received and all

(a) His or their respective share or shares of &c.

stock in trade belonging to the said parties or either of them in the said joint concern shall be used therein for the utmost profit and advantage of the said parties in equal moieties (*a*) as aforesaid and not otherwise.

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13. That all books of account and all bonds bills notes letters and vouchers and the said indenture of lease and all other securities and papers belonging to the said joint concern shall be deposited and kept on the premises where the said joint concern shall be carried on in which books all just and true entries shall be made of all transactions purchases payments receipts profits debts losses orders and all other matters concerning the same to all which books and securities both the said parties shall have free access at all times with liberty to copy or extract the whole or any part thereof.

Books and
securities de-
posited on the
premises.

14. That (*b*) the said A. B. shall be at liberty to draw out from his moiety of the profits of the said joint concern the sum of £ weekly for and towards his private expenses which sum shall be carried to the debit account of his moiety.

A. B. to draw
£ weekly.

15. That the said C. D. shall be at liberty during the first years of the said copartnership as a return for his said capital of £ so by him brought in as aforesaid to draw out from the said joint concern at the rate of £ per cent. per annum thereon and no more and that all such profits as may arise and be considered as due to him for his moiety of the said joint concern over and above the said £ per cent. shall remain in the said joint concern as an increased capital and shall not be drawn out during the said period of years.

16. That they the said parties shall at the expiration of the said first years from the day of the date of these presents once in every year during the continuance of the said copartnership on the day of or within days then next

Mutual ac-
count.

(*a*) Or, in the case of several, "according to their shares and proportions."

(*b*) Where there is an acting partner, and several dormant partners, and it be so agreed, say, "That the said D. shall be at liberty to draw out of the profits of the said joint concern weekly for and towards his private expenses the sum of £ which sum shall be carried to his debit And the said A. B. and C. shall be at liberty during the first years of the said copartnership as a return for their respective shares of the said capital sum of £ so by them brought in as aforesaid to draw &c. (*as above*) And that all such profits as may arise and be considered as due to them or each of them in respect of his share and interest in the said joint concern over and above the said £ per cent. shall remain &c." *as above*.

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following come to a fair plain and perfect account in writing of and concerning all matters relative to the said copartnership and of all transactions and monies received and paid or to be received and paid debts due and owing to and from them securities for money or property stock in trade utensils and effects losses damages charges and expenses whatsoever to the end that the true state of the said joint concern may appear and the same accounts when fairly transcribed shall be signed by both the said parties and shall then be conclusive between them and shall not be unravelled unless any error be discovered therein to the amount of £ And such balance or sum of money as upon the taking of such account shall be found and acknowledged to be the share of each of the said parties shall be carried to his respective and separate account.

Final account.

17. That at the close or termination of the said copartnership or within days then next following a final account and partition shall in like manner be taken and made between them of the whole balance thereof and upon the making &c. [see *General Precedent*, Art. 15].

Option in case
of death.

18. That in case of the death of either of them the said parties before the expiration of the said copartnership a true and correct account shall be then made between the survivor of them and the executors or administrators of the party so dying and the survivor (*a*) shall have the option of taking the whole of the said partnership property at the rate or value at which the same shall be then appraised or valued on paying one moiety (*b*) of such valuation to the executors or administrators of such deceased party.

Dissolution.

19. That if either of the said parties shall at any time during the said term of years be minded and desirous of putting an end to the said copartnership hereby created he shall be at liberty so to do on giving months' notice in writing to the other (*c*) of them of such his mind and intention whereupon a final account shall forthwith be made in like manner as hereinbefore directed and the party (*d*) continuing shall have the privilege of taking to the whole of the partnership concern and property at the rate at which the same shall be appraised and

(*a*) Or, where there are several partners, "or the survivors of them."

(*b*) Or, "his or their share or shares of such valuation."

(*c*) Or, "the other or others of them of such his or their mind &c."

(*d*) Or, "the party or parties continuing."

valued on paying (a) one moiety of such valuation to the party so relinquishing the same.

20. That if any doubt dispute or difference shall arise between the said parties or between them and any other person with whom they have any dealings or transactions the same shall be referred to the arbitration &c. [see *General Precedent*, Art. 18].

21. That upon any such final account or award the said A. B. and C. D. (b) their executors or administrators shall forthwith pay and divide or cause to be paid or divided each to the other of them such sums of money debts and effects as the case shall require or shall secure such sums to be paid by such securities as shall then be dictated by any such award or be agreed upon by the party to whom the same shall be due and owing.

22. That upon payment of such monies or delivery of such effects or giving securities for the same respectively as aforesaid the said parties hereto shall execute to each other mutual releases and discharges and deliver up these presents to be cancelled.

23. That neither of the said parties their executors or administrators shall at any time or times be charged or chargeable by virtue of these presents for any loss damage payment or mischance unless the same shall arise from his own wilful neglect default or procurement.

24. Finally that for the due and punctual performance of all and every the clauses and agreements hereinbefore contained and expressed the said parties do hereby bind themselves in the sum of £ by way of liquidated damages [see *ante*, AGREEMENTS, Pref. sect. 9, p. 80.] *In witness &c.*

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*Between
Manufacturers.*

Arbitration.

Division.

Mutual re-
leases.

Neither party
to be chargeable
but for wilful
defaults.

Penal clause.

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*Articles of Copartnership between Wharfingers or Canal Carriers.
(Variations for Common Carriers.)*

No. CCCXIX.

*Between
Wharfingers.*

Articles of Agreement made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part and E. F. of &c. of the third part *Whereas* G. A. of &c. and W. G. of &c. carried (c)

Recital of origi-
nal copart-
nership.

(a) Or, "his or their share or shares of such valuation."

(b) A., B., C. and D.

(c) Or say, "carried on or exercised the trade or business of common carriers in copartnership from L. to N. and the adjacent places under the firm of G. A. and W. G. common carriers from L. to N."

No. CCCXIX. on the carrying trade or business on the river S. [or “on the line of canal between S. and L. and the intermediate places”] under the name of the S. trade for some years previous to the day of last on which day the copartnership expired *And whereas* the said G. A. and G. W. by indenture of assignment bearing even date with these presents For the considerations therein mentioned have assigned and transferred unto the said A. B. C. D. and E. F. *All those* two equal moieties or half parts or shares of them the said G. A. and W. G. (a) of and in the said S. trade and of and in all boats barges vessels trows and all implements cordage stores and furniture belonging to the said trade or business (except book debts) and of and in the messuage wharf quay or landing-place where the said S. trade hath been heretofore carried on at or for the price or sum of £
And whereas the said A. B. C. D. and E. F. have agreed to become (b) copartners and joint adventurers in the said S. trade under the style and firm of A. B. and Co. for the term of years if the parties shall so long live to commence from the date hereof in manner and subject to the several covenants conditions and limitations hereinafter for that purpose contained *Now these presents witness*

Joint stock.

To advance more money as agreed upon.

Monies advanced by partners to be first paid.

1. That each of them the said A. B. C. D. and E. F. shall on the day of the date of these presents bring into the said copartnership concern between them in good-will effects and money the sum of £ in equal shares and proportions And that they shall and will as occasion shall require jointly and severally advance such sum and sums of money as they shall mutually agree upon as being necessary and sufficient for carrying on and managing the said concern But if any or either of them with the consent of the other or others of them shall voluntarily advance or lend more monies in the said concern than the other partner or partners he or they shall be allowed and paid out of the profits of the said trade or by the other partners all monies so advanced or lent with interest for the same after the rate of 5*l.* per cent. per annum from the day such advance shall be made.

(a) Or, “of and in the said F. van and waggon concern and of and in all vans waggons machines horses harness implements utensils stock in trade and effects belonging to the said trade or business and of and in the leasehold messuage offices and premises situated at L. and N. where the said trade hath been heretofore carried on.”

(b) Or, “copartners in the said trade of common carriers from L. to N. under the style and firm of the N. van and waggon concern.”

2. That all monies brought in or to be brought into the said copartnership and all monies received for or on account of the said copartnership business or joint concern shall be paid into the banking house of at or such other banking house as the said parties shall from time to time mutually agree upon such payments and receipts together with all other matters relating to the said concern to be entered in proper books of account to be kept during the said copartnership in the respective offices in which the said joint concern shall be carried on so that each of the said parties may constantly have free access to the same for the purpose of examining inspecting or making extracts from the same at pleasure.

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*Between
Wharfingers.*

Monies, &c. deposited with bankers.

Payments, &c. to be entered.

Books kept in the offices of business.

3. That each of the said parties hereto shall and will during the said copartnership jointly and severally bear and allow to each and every of them an equal share of the expenses of repairing (a) all and every the boats barges trows vessels and the tackle and furniture thereto belonging And also the rent of all houses warehouses cellars quays offices and premises to be used or occupied by them in their said joint concern And also all taxes rates duties and impositions payable or to become payable in respect of the messuages warehouses and offices save and except as is hereinafter excepted And also all salaries and wages of clerks book keepers and servants and maintenance of bargemen drivers apprentices and other servants And also all losses and damages happening to the said trows boats barges and vessels or to the freight thereof respectively by fire storms tempests lightning or other inevitable accidents And also all losses costs charges damages and expenses which may happen to the said copartnership concern on account of bad debts unfaithful servants actions or suits at law or in equity or which may happen or be occasioned by any other means whatsoever without the wilful default or neglect of each other And also all other necessary and incidental charges and expenses whatsoever relating to

To bear expenses equally.

(a) Or, "all expenses of repairing vans and waggons And also all losses or damages which shall or may happen to the said joint concern by the death or sickness of cattle actions or suits at law or in equity or other casualties or accidents in carrying on the said joint trade And also all rent and taxes payable in respect of the premises where the said joint concern is carried on And also all clerks' book keepers' and servants' wages and all other costs charges and expenses which shall or may happen to the joint concern without the wilful default of either of them and which shall be necessary for carrying on the said joint trade during the continuance of the said copartnership all which" &c. *as above*.

No. CCCXIX. or in anywise occasioned by the said joint trade all which said expenses shall from time to time be paid and sustained out of the joint stock or the proceeds arising thereby or by the said copartners in equal shares and proportions.

*Between
Wharfingers.*

Number of
clerks, &c. to
be determined
by the parties.

4. That such number of clerks and book keepers and other servants shall be employed and such order and method observed in managing and carrying on the said joint trade as the said A. B. C. D. and E. F. or any two of them shall judge necessary and expedient.

C. D. to employ
himself dili-
gently at L.

5. That the said C. D. shall and will during the continuance of the said copartnership actively employ himself in and about the sole and exclusive management and carrying on the said joint concern in and upon the said premises situate at or where the said joint concern is now carrying on And shall and will once at least in every fortnight make out a clear statement in writing of the several sums respectively received and paid for or on account of the said joint concern within the last preceding fourteen days and the same statement will duly send and transmit and cause to be delivered unto each of them the said A. B. and E. F. at the office at in

E. F. to employ
himself dili-
gently at N.

6. That the said E. F. shall employ himself in the sole and exclusive management of the said concern at the respective offices at N. and S. And shall and will once at least in every fortnight make out &c. (*as above*).

A. B. to go
journeys and
be cashier.

7. That the said A. B. shall not be required to take any active part in the said joint concern otherwise than he shall think proper except to take occasional journeys when in the opinion of the said parties it shall be necessary for the good of the said concern and also to act as cashier to the said copartnership until the said parties mutually agree to choose any other person.

Cashier to keep
a cash book.

8. That the said A. B. as such cashier shall keep a proper cash book in which he shall enter all receipts and payments on account of the said trade or business of the said copartnership the said book to be open at all times for the inspection and examination of the said copartners And he shall balance the said cash book on the last day of every month unless the same shall happen on a Sunday and then on the Saturday preceding but in case the said A. B. shall be absent on journeys or prevented by sickness or any other inevitable cause from acting as cashier then the cash book shall be kept by the copartner who shall be then residing at S. and shall be balanced once a month in manner aforesaid.

9. That the said A. B. or the cashier for the time being shall from time to time pay all monies bills notes and other securities received by him on account of the said copartnership into the said banking house of Messrs. at as aforesaid or the banking house for the time being of the said copartnership to the joint account of the said copartners And that all drafts or orders upon the bankers shall be signed by the said A. B. as such cashier and by no other of the copartners except as before excepted.

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*Between
Wharfingers.*Cashier to pay
monies, &c.
into banking-
house.

10. That each of the said parties who shall receive monies bills notes or other securities on account of the said copartnership shall within fourteen days from his receiving the same or returning from a journey account with and pay the same into the hands of the cashier for the time being.

Copartners to
pay over to
cashier.

11. That in consideration of the said C. D. solely carrying on the said joint concern at as aforesaid and the great labour and trouble to him thereby occasioned such part of the said house and premises as is not appropriated to or required for the said joint business shall be occupied by him the said C. D. for his residence without paying any rent or taxes or any other outgoings payable for or in respect of the same And in the event of a removal of the said business from the said house and premises as aforesaid then there shall be allowed and paid to the said C. D. out of the said copartnership the clear annual sum of £ unless there shall be suitable accommodation in such other house or premises for the residence of the said C. D. or he shall be otherwise provided with a suitable residence And that the said E. F. shall be allowed exclusively to occupy the house and premises in the country where the business hath heretofore been carried on without paying any rent taxes or other outgoings payable in respect of the same and without being liable to do any repairs for the same which rent taxes and repairs are during the continuance of the said copartnership to be wholly borne and paid by and out of the same joint concern.

C. D. to have
house rent-free.E. F. to have
house in the
country rent-
free.

12. That while the said A. B. is out on the said journeys he shall be allowed out of the said concern the sum of £ per day for his travelling expenses over and above what he shall pay for railway fare coach hire drivers guards and turnpikes And shall also be allowed standing and keep of one horse for his own use in the copartnership stable in L. And also 6*d.* a mile for such horse when employed on the copartnership account.

Allowance of
travelling ex-
penses to A. B.

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*Between
Wharfingers.*Profits to be
divided propor-
tionably.Bonds, &c.
taken in the
name of the
firm.Bonds, &c.
given with the
consent of the
whole firm.Parties to be
just and faithful
to each other.C. D. and E. F.
to devote their
whole time.Penalty for ab-
sence.Not to employ
copartnership
money without
consent.Not to trust
when notice has
been given not
to do so.

13. That the said A. B. C. D. and E. F. shall be entitled to the clear net gains and profits arising from the trade or business of the said copartnership (in which shall be comprehended the premiums of apprentices) according and in proportion to their several and respective shares in the said capital or joint stock.

14. That all bonds notes and other securities whatsoever which shall be taken by the said copartnership shall be made and taken in the names of the copartners for their joint use and benefit.

15. That all bonds bills notes and other securities given to any person or persons whomsoever on account of the said joint trade shall be signed by the said A. B. or the cashier for the time being in the name and with the consent of the whole firm.

16. That each of the said parties shall be just and faithful to the others of them in all his buyings sellings accounts payments dealings and transactions whatsoever and shall and will on request give and render a true account in writing of the same.

17. That each of them the said C. D. and E. F. shall and will diligently employ himself in conducting the said copartnership concern and to the utmost of his skill and ability carry on and manage the same to and for the benefit and advantage of the said joint trade And it is hereby declared and agreed by and between the said parties that in case the said C. D. and E. F. or either of them shall absent himself from his respective office at L. or S. for a longer period than the space of days at any one time during the continuance of the said copartnership (except by reason of sickness or any other reasonable cause and with the consent of the others of them the said parties) he shall pay or cause to be paid unto the said copartnership concern the sum of £ per week during such absence and so in proportion for any greater or less time than a week.

18. That none of them the said A. B. C. D. and E. F. shall without the consent of the others of them employ any money goods or effects belonging to the said copartnership or engage the credit thereof in any matter or thing except upon the account and for the use and benefit of the said joint concern in the regular course of trade.

19. That none of them the said A. B. C. D. and E. F. shall at any time during the continuance of the said copartnership trust any person or persons or lend any of the monies or deliver upon credit any of the goods belonging to the said copartnership to any person or persons whom the others or other of them shall

before the giving of such trust or the sending or delivering of such money or goods have forbidden them or him by notice in writing to trust.

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*Between
Wharfingers.*

20. That if any of them the said A. B. C. D. and E. F. shall trust any person or persons or lend any money or deliver upon credit any goods of or belonging to the said copartnership after such notice as aforesaid Then and in every such case the party so lending or trusting as aforesaid shall pay to the said copartnership so much ready money as the money or goods which he shall so lend or deliver upon credit shall amount unto or be valued at.

Penalty in case
of trusting.

21. That none of them the said A. B. C. D. and E. F. shall without the consent of the others of them in writing first had and obtained compound for the settlement of any account by abatement or allowance for damages or casualty relating to the trade of the said copartnership when the same shall exceed the sum of £ or compromise for any debts (a) due to the said copartnership or enter into any bond judgment or statute or become bound or charged as bail surety or security with or for any person or persons whomsoever or subscribe any policy of insurance or draw sign indorse or accept any note bill of exchange or other security in the names or on the credit of the said copartnership.

Re-striction on
partner.

22. That none of them the said A. B. C. D. and E. F. shall do or willingly suffer to be done any act matter or thing whatsoever whereby or by means whereof the capital or stock in trade of the said copartnership or any part thereof may be seized attached extended or taken in execution.

23. That neither of the said parties shall and will without such consent as aforesaid take or draw out any sum or sums of money (other than and except for the purposes of the said joint trade) And in case either of the said parties shall at any time during the continuance of the said copartnership lend deduct &c. except as aforesaid such partner or partners shall forfeit to the others of them three times the amount of the sum so lent deducted taken or drawn out of the joint trade.

24. That neither of the said parties shall without the consent of the others of them enter into any concern either separately or jointly with any other person or persons in (b) navigating the

(a) As to the necessity of this provision, see COMPOSITION, Pref. sect. 8, p. 563.

(b) Or, "in carrying goods for hire from L. to N. and the parts adjacent."

No. CCCXIX. said river [*or* “canal or canals”] or in carrying goods merchandise or wares thereon And shall not either jointly or separately carry on any trade that can or may prejudicially affect the said copartnership trade (*a*).

Each to pay his debts.

25. That each of them the said A. B. C. D. and E. F. shall and will from time to time duly and punctually pay and discharge the debts now due and owing or hereafter during the continuance of the said copartnership to be due and owing from him or them to any person or persons whomsoever and shall and will at all times hereafter save defend and keep harmless and indemnified the others of them their heirs executors and administrators and the said capital or joint stock and property of the said copartners and the gains and profits thereof of and from and against their respective private engagements and of from and against all actions suits costs charges damages and expenses on account of the same (*b*).

Dissolution for misconduct.

26. That (*c*) in case either of them the said A. B. C. D. and E. F. shall become insolvent or be declared bankrupt or suffer judgment to be obtained against him and any execution be prosecuted against him or in case either of them shall be arrested and lie in prison for the space of days without being bailed or shall withdraw or secrete himself from or neglect or refuse to hold communication with his copartners for days together in any one month or shall lend borrow or draw bills on the copartnership account or compound debts due to the copartnership (otherwise than with such consent as aforesaid) or shall omit or do any act matter or thing contrary to the stipulations hereinbefore contained and the true intent and meaning of them and these presents or any other act matter or thing whatsoever whereby

(*a*) As to the effect of this limitation, see Pref. sect. 10; and if it be necessary, add “*Provided* nevertheless that neither this indenture of copartnership nor any matter cause or thing herein contained shall create any joint interest or concern whatsoever between them the said parties in any or either of their employments or concerns which they any or either of them may use or carry on either by themselves or jointly with any other person or persons whomsoever but shall relate to and concern the said S. trade only anything herein contained to the contrary notwithstanding.”

(*b*) As to the separate debts of partners, see sect. 10, p. 677.

(*c*) In ordinary cases, a general clause empowering parties to dissolve the partnership on any breach of the articles may be sufficient, but there may be cases in which particular provisions are necessary to protect parties, as courts of equity, in the absence of such stipulations, will not give relief, except in extreme cases, see Pref. sect. 13, p. 678.

or by means whereof the said capital stock or the interest credit and welfare of the said joint concern may be possibly injured or in any manner prejudicially affected howsoever Then and in every such case it shall be lawful to and for the other or others of them upon discovery of such default immediately to dissolve and determine the said copartnership by giving to or leaving for him or them in the office notice in writing of such his or their desire and the said copartnership shall be considered as dissolved and determined as far as regards the party so offending from the time of delivery or leaving such notice as aforesaid as if the same had expired by effluxion of time.

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*Between
Wharfingers.*

27. That on the day of next ensuing and the same day of in every year during the said copartnership or as soon as convenient may be after that day not exceeding three months a full and general account shall be made of the stock in trade and of all the goods monies debts payments receipts profits and increase and all other things that are usually comprehended in annual accounts of a like nature taken by partners engaged in the trade or business of carriers and that a valuation or appraisement shall be made of all the particulars in the said account as shall admit of valuation or appraisement and that the said general account and valuation shall from time to time be written in three books and be signed in every such book by each of them the said A. B. C. D. and E. F. And that after such subscription each of them the said A. B. C. D. and E. F. shall take one of the said books into his custody and shall be bound and concluded by every such account respectively unless some manifest error shall be found therein and signified by any of the said parties to the other or others of them within three calendar months next ensuing the signing of such account in which case such error shall be rectified (a).

Annual accounts.

28. That at the expiration of months after such general account and valuation shall have been so made taken and signed by the said partners as aforesaid all the residue and surplus which from time to time shall remain of the net gains and profits of the said joint trade or business after such annual sums of money and allowances as are hereinbefore directed to be paid and made shall be taken out of the same and after deducting £ per cent. upon the stock only of the boats stores and

Net profits to be divided.

(a) For a more special provision as to annual rests or accounts, see *post*, *Copartnership between Bankers*, Art. 18.

No. CCCXIX. other joint property of the said copartnership and after leaving
Between the full capital sum of £ in the said trade or business shall
Wharfingers. be divided by and between the said A. B. C. D. and E. F. in
the proportions following (that is to say) each of them the said
A. B. and C. D. two fifth parts thereof and the said E. F. the
other remaining fifth part thereof And in case upon taking such
general account and valuation there shall appear to have been a
loss instead of a profit arising from the copartnership then and
as often as the same shall happen they the said A. B. C. D. and
E. F. shall immediately thereupon pay and contribute in the
proportions as aforesaid towards making up such deficiency.

Expiration of
the term.

29. That within three calendar months next after the expira-
tion of the said copartnership a general account in writing shall
be taken of all the stock in trade monies debts and effects then
belonging to remaining or being in the trade or business of the
said copartnership and of all debts and sums of money due and
owing from or by the said copartners to any person or persons
And a valuation and appraisement of all the particulars included
in such account which in their nature shall be susceptible of va-
luation or appraisement shall be respectively made stated settled
and taken and signed and subscribed in such manner as hereinbe-
fore is expressed with respect to the annual account valuation or
appraisement hereinbefore described And thereupon all monies
due to the said parties in respect of advances made to the said
joint concern over and above the permanent capital thereof shall
be paid and then the capital which shall have been advanced
respectively by the said parties as aforesaid shall be repaid and
satisfied and then all other debts owing in respect of the said
joint copartnership shall be paid and for the purpose of making
such payments so much of the said partnership property and
effects shall be sold as shall be necessary and the credits shall be
collected and got in and after such several payments the residue
shall be divided between them according to their several propor-
tions and shares as aforesaid And all such outstanding debts as
shall not be collected on or before the day of to be
taken by tender of either party under seal offering the largest
value for the same and such uncollected debts to be then accord-
ingly assigned to and at the expense of the partner or partners
taking the same by the other partners *Provided always* and it
is hereby declared and agreed by and between the said parties
hereto that if all the said partners be living at the expiration of the
said term of years and any one or two of them shall be

Proviso as to
continuing co-
partnership at
the expiration
of the term.

minded or desirous to continue in and carry on the said trade or business and the others or other of them shall decline so doing and the partners and partner so minded as aforesaid shall be desirous of purchasing the share or shares of such other partners or partner of and in the said copartnership estate and effects (save and except the debts then due and owing to the same) and shall give notice in writing within one calendar month next after the expiration of the said copartnership of such his and their intention to such others or other of the said copartners Then and in that case an account and valuation shall within three calendar months next after the expiration of the said term of years be made of the respective fifth parts or shares of such last mentioned copartners or copartner of and in the said copartnership estate and effects (except as before excepted) by two indifferent persons to be named and chosen one by the continuing and the other by the retiring copartners or copartner and such valuation shall be considered and taken as the price or value thereof And if such copartners or copartner shall within the space of six calendar months well and truly pay or cause to be paid unto such others or other of them the amount or value of such respective fifth parts or shares the same shall then be and become the absolute property of the partner or partners so paying the same as aforesaid (a).

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*Between
Wharfingers.*

30. That in case the said A. B. shall depart this life at any time during the continuance of the said copartnership the said C. D. and E. F. shall continue to carry on the said copartnership for the remainder of the said term of years upon the terms and subject to the stipulations and agreements herein contained as far as the nature of the case will admit under the firm of and in such case the said C. D. shall stand and be possessed of and interested in the said two fifth parts or shares of the said A. B. of and in the said concern and the gains and profits thereof for the remainder of the said term of years in trust for the executors administrators and assigns of the said A. B.

Death of either parties.

Death of A. B.

31. That in case of the death of the said C. D. before the expiration of the said term the shares of the said C. D. of and in the said joint concern and of and in the gains and profits

Death of C. D.

(a) For a variation in the mode of winding up partnership accounts, see particularly *General Precedent*, Art. 14; and *Copartnership between Bankers*, Art. 28.

No. CCCXIX. thereof shall during the remainder of the said term of
Between years go and belong to such of the then partners in such shares
Wharfingers. and proportions as the said C. D. shall by his last will and tes-
 tament or any writing in the nature of or purporting to be his
 last will and testament or any codicil or codicils thereto direct
 or appoint and in default of such direction and appointment to
 the executors or administrators of the said C. D. *Provided*
nevertheless and it is hereby declared and agreed that the exe-
 cutors or administrators who under this last mentioned provision
 shall succeed to the share of the said C. D. in the said joint
 business shall not be at liberty to intermeddle in the manage-
 ment of the said copartnership concern otherwise than by in-
 specting the books of account belonging to the said copartnership
 trade and examining into the state of the same for their informa-
 tion or satisfaction or by assisting in making up and settling the
 yearly general account in manner hereinbefore directed unless
 the said executors or administrators shall be required to take an
 active part in the management or conduct of the said business
 by the surviving partners or partner *Provided nevertheless*
further that if such executors or administrators of the said C. D.
 shall take an active part in the management of the said business
 being required so to do by the surviving partners or partner
 then and in that case they shall be allowed to deduct or retain
 the sum of £ annually for his or their trouble.

Death of E. F. 32. That in case of the death of the said E. F. before the
 expiration of the said term of years the surviving or continuing
 partners shall pay or cause to be paid to the executors or ad-
 ministrators of the said E. F. the value of his share of and in
 the said copartnership as the same shall appear by the then last
 yearly general account and valuation if any shall have been taken
 and if not as the same shares shall be valued by any three arbi-
 trators one to be chosen by the surviving partners or partner one
 by the executors and administrators of the said E. F. and the
 third by the two referees the amount of such valuation to be
 secured by bills of exchange to be accepted by the surviving
 partners or partner in manner following (that is to say) [*here state*
times of payment, see post, Copartnership between Bankers, Art.
25] and also by the bond of the surviving partners or partner
 the expense of such bills and bond to be borne by the surviving
 partners or partner *And further* that the surviving partners or
 partner shall at their or his expense execute and give to the exe-
 cutors or administrators of the said E. F. so dying their or his

bond for indemnifying the estate and effects of him the said E. F. from and against the debts which shall be due and owing by the said copartners and all claims and demands for or on account of the same such bond to be joint and several if there shall be more than one surviving partner And from and immediately after the delivery and execution of such bills and bonds the surviving partners or partner of the said E. F. shall be entitled to the share of the said E. F. of and in the said copartnership stock and of and in the gains and profits of the said trade or business and the same shall be divided between or among such surviving partners if more than one in proportion to their respective shares of and in the residue of the said copartnership stock and of the gains and profits of the said business and such last mentioned partners shall continue to carry on the said trade or business in copartnership during all the then residue of the said term of years upon such and the same terms and under such and the same conditions and agreements as hereinbefore and hereinafter contained or as near thereto as the case will admit *Provided nevertheless* and it is hereby declared and agreed by and between the parties hereto that in case such surviving partners or partner shall after the decease of the said E. F. admit any new partners or partner or withdraw himself or themselves from the said copartnership so as to make any alteration whatsoever in the firm of the said copartnership or if no such alteration shall be made in the said firm but default shall happen in payment of any of the instalments of the principal and interest hereinbefore agreed to be secured to the executors or administrators of the said E. F. or any part thereof respectively then and in either of the said cases the executors and administrators of the said E. F. shall have full power to inspect all the books of account and other papers relating to the said copartnership at all reasonable times upon giving days' notice in writing to the partners or partner for the time being and if such executors or administrators upon any such inspection shall be of opinion that from the state of the said trade or business of the said firm their or his security for the money which shall have been secured to them or him by the surviving partners or partner pursuant to the provisions hereinbefore in that behalf contained or any part thereof shall be in any respect deteriorated or diminished then and in every such case a reference shall be made to three indifferent persons to be chosen in the manner hereinbefore mentioned and if the said

No. CCCXIX.

*Between
Wharfingers.*

Proviso in case
of alteration in
the firm or of
non-payment of
bills.

No. CCCXIX. referees shall by their award agree in opinion with the executor or executors administrator or administrators of the said E. F. Between Wharfingers. with respect to the matters aforesaid then and immediately thereupon all the stock in trade and effects of the said firm whatsoever shall be sold and disposed of collected and got in and a final distribution of the same and the money arising therefrom shall be made and paid in such and the same manner as if the said copartnership had expired by effluxion of time and the money secured to the executors and administrators of the said E. F. and the remaining clear share upon such distribution be paid instantly But nothing in this present clause mentioned is intended to be in anywise prejudicial to or to affect the said security which shall have been given by such surviving partners or partner to the executors or administrators of the said E. F. for any such principal money or interest as aforesaid or any part thereof respectively.

Retirement of parties.

33. That if any one or more of them the said A. B. C. D. or E. F. shall be minded to retire from the said copartnership at the expiration of years &c. and shall give notice in writing to that effect to the others or other of the said copartners then and in such case the copartnership so far as regards such partner or partners who shall be desirous of withdrawing as aforesaid shall cease and determine And in that case the amount or value of the share or shares of him or them so retiring as aforesaid shall be paid and the payment thereof secured and the retiring party or parties indemnified by the continuing party or parties in the same manner as hereinbefore directed in the event of the death of the said E. F. and the continuing partners or partner shall be entitled to the share or shares of the partner or partners so retiring in like manner as is hereinbefore directed in that behalf.

34. That if any &c. [*provision in case of lunacy, see post, Copartnership between Bankers, No. CCCXXI., Art. 26; also as to Notice, Art. 29; and Arbitration Clause, Art. 30*] In witness &c.



No. CCCXX.

No. CCCXX.

*Articles of Copartnership between Two Merchants, one in London,
and one in a Foreign Establishment.*

*Between
Merchants.*

This Indenture made &c. Between (a) A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said A. B. and C. D. have agreed to become partners together as merchants together in the trade or concern hereinafter mentioned for their mutual and equal risk on the terms and conditions and for the period of time and subject to the provisoes and conditions hereinafter particularly set forth and expressed Now this Indenture witnesseth That they the said A. B. and C. D. do hereby mutually covenant promise and agree the one with and to the other of them and for their respective executors administrators and assigns in manner following (that is to say)

1. That from and immediately after the date and execution of these presents they shall and will open and commence a joint trade together as general merchants at P on the coast of Brazil in South America and establish a counting house at London convenient for carrying on the said joint trade with P as aforesaid. Commencement of the partnership.

2. That the same shall continue from henceforth for and during the period or term of years and no longer unless a further term shall be agreed upon between them under the firm of A. B. and Co. Duration.

3. That the said A. B. and C. D. shall embark in the said joint trade the capital sum of £ each on the day next after the day of the date hereof and shall and will respectively credit the joint account of the said copartnership with interest at the rate of 5*l.* per cent. per annum on so much as shall not then be brought in and for so long a time as the same shall be deficient. Capital.

4. That the said C. D. shall forthwith set out on a voyage to P for the purpose of establishing the said joint trade there in the said firm and shall and will reside at P for the purposes aforesaid and shall devote the whole of his skill judgment and ability superintendence time and attention thereto during all the term of this partnership in establishing conducting and carrying on the same And shall not nor will carry on any other C. D. to conduct the business at P.

(a) For variations, where the firm consists of several partners, &c., see next Precedent.

No. CCCXX. trade either for himself alone or in conjunction with any other persons whomsoever for his own benefit and advantage.

*Between
Merchants.*

5. That all goods merchandizes and effects purchased and taken up by him the said C D. at P aforesaid on account of the said joint trade shall from time to time and at all times be consigned and due advice for insurance thereof or otherwise be sent to the firm of A. B. and Co. in London.

A. B. to conduct the business in England.

6. That the said A. B. being already engaged in other business in England shall be at liberty to continue the same and shall not be required to quit England on account of any matter or thing whatsoever concerning the said joint trade And that all the concerns of the said joint trade shall be conducted in Great Britain and Ireland by the said firm of A. B. and Co. under the direction and control of the said A. B.

C. D. to have no interest in other business of A. B.

7. That the said C. D. shall not have or be deemed to have any right or interest in any of the other affairs or concerns of the said A. B. but only in the said house firm or joint trade to be carried on at P aforesaid which shall be at all times and shall be deemed and taken to be a distinct establishment and to have no connection with the said other affairs or concerns of the said A. B.

Profits and losses in equal moieties.

8. That the said A. B. and C. D. their respective executors administrators and assigns shall be deemed and taken to be interested in and entitled to all the property and effects of the said joint trade and all profits and advantages to be made thereby in every respect and be liable and accountable to each other for all losses damages and expenses purchases payments claims and demands whatsoever concerning the same in every respect in equal moieties.

Interest on monies left in the partnership.

9. That they shall be respectively entitled to interest at the rate of 5*l.* per cent. for all sums which over and above the before-mentioned capital of £ either of them shall bring in and suffer to remain and be employed in the carrying on and extending and improving the said joint trade for so long a time as they shall suffer the same sum or any part thereof so to remain therein and the like interest for the whole or any part of the sums which each of them shall be entitled to draw out according to the provision in that behalf hereinafter mentioned.

10. That all such goods bills monies and effects which shall be sent consigned or transmitted either from Great Britain or Ireland to P or from P to Great Britain or Ireland shall be for the mutual account risk profit and loss of them the

said A. B. and C. D. their respective executors administrators and assigns in equal and distinct moieties.

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*Between
Merchants.*

11. That each of them the said A. B. and C. D. shall be entitled to charge to the joint account of the said partnership all sums of money losses damages bad debts costs charges and expenses on any account whatsoever paid sustained borne or incurred by him as well at London as at P for the use and in the management and conduct of the said joint trade particularly the expense of a competent person to conduct the business and forward the general interest of the said concern including his travelling charges And that the said C. D. shall be entitled to charge the joint account with the sum of £ for the voyage of himself and one other person and the sum of £ yearly for house expenses and also to charge for house rent necessary clerks and all other charges incurred in maintaining the establishment there.

Charges to the
joint account.

Allowances to
C. D. for esta-
blishment at P.

12. That the said A. B. shall be allowed in addition to his share of the net profits of the said trade the usual commission on all assignments made by the firm in P to the said house in London and also on all bills of exchange and insurance transactions.

Allowances to
A. B.

13. That each of them the said A. B. and C. D. shall be at liberty from time to time to draw out of the said partnership effects for his own use and benefit as well interest after the rate of 5*l.* per cent. on the amount of his respective capital so brought and continued in the said joint concern as aforesaid as one moiety or half part of and in the net profits thereof within six months next after the same shall have been correctly ascertained and the accounts thereof shall have been made out and transmitted to each of them and mutually signed by them and not before and that the other moiety thereof shall remain in the said joint trade to increase their mutual capital therein That no benefit or advantage of survivorship shall &c. [see *General Precedent*, Art. 12].

To draw out.

14. That the said &c. shall and will be faithful &c. [see *General Precedent*, Art. 15] That neither of them the said A. B. and C. D. shall or will at any time during the continuance of the said copartnership term of years become bail for any other person or deliver or execute any assignment of the copartnership effects draw accept or indorse any promissory note or bill of exchange for the accommodation of any other person or do or cause to be done any act whatsoever either in the name of the said firm or

Not to become
bail, &c.

No. CCCXX. *Between Merchants.* in their own separate names or capacities whereby it may be possible that the said joint interest may be in any manner injured diminished charged or prejudicially affected but that nothing herein provided shall extend or be construed to extend to interfere with the engagements of the said A. B. in his own affairs.

Books of account.

16. That for the better manifestation of the just and upright dealings between them the said parties hereto all proper books of account shall be provided as the said joint stock trade shall require wherein all transactions matters and things whatsoever which in any manner affect or concern the same shall be correctly entered and that nothing shall be wilfully defaced altered or obliterated therefrom without the previous knowledge and consent of each other and shall be freely open to the access of each other for inspection copy or extract therefrom for their mutual satisfaction.

Annual accounts.

17. That some time in the month of in every year during the continuance of this partnership the said parties hereto shall mutually make out a balance or clear and just account in writing up to the day of the previous of all such transactions as have theretofore passed in the conduct of the said joint trade with any securities vouchers and letters which may tend to elucidate explain and manifest the situation and condition thereof and of the balance of the said joint account subsisting at that time and shall duly transmit to each other fair transcripts thereof subscribed with their respective names.

18. That in order the better to enable the said A. B. to make correct and immediate entries of the said copartnership accounts and transactions the said C. D. shall transmit to him once in every month a correct copy of the journal kept by him at P during the preceding month and the said A. B. shall for the like purpose also transmit to the said C. D. once in every three months a correct copy of the account which shall have been kept by him during the preceding three months.

Final account on the death of one party.

19. That in case either of them the said A. B. and C. D. shall die before the expiration of the said term of years and there shall be any outstanding debts credits and transactions of the said joint trade the survivor of them shall forthwith proceed to make out a final general account thereof and shall with all speed wind up the said joint concern and finally pay and satisfy the executors or administrators of the party so dying the balance or share to which the said party is entitled And such final and mutual releases acquittances discharges and

securities shall be forthwith made and executed between them as the nature of the case shall require And that from and after such final account so made and signed between them the said parties the said joint concern shall absolutely vest in and belong to the survivor of the said parties for his own risk and benefit and such final account shall not afterwards be disturbed unless an error can be clearly pointed out within months after the signing thereof.

20. That at the expiration of the said term of years in case the same copartnership shall not have previously been determined such final account shall be forthwith made out and all such division of assets releases acquittances discharges and securities shall be given and exchanged between the said parties as shall effect such the termination of the said joint trade accordingly.

21. That in case of any dispute &c. [*Arbitration clause*, see *General Precedent, ante*, p. 686] *In witness &c.*

No. CCCXXI.

Articles of Copartnership between Bankers.

Obs. There is no difference in principle between the case of a banking house or any other partnership, as to the equity of the creditor against the deceased partner's estate, *Devaynes v. Noble*, 1 Mer. 564.

This Indenture made &c. Between A. of &c. of the first part B. of &c. of the second part C. of &c. of the third part D. of &c. of the fourth part E. of &c. of the fifth part and F. of &c. of the sixth part &c. *Whereas* the said A. and B. have for some years carried on the business of bankers in copartnership *And whereas* the said A. and B. are entitled to the message and premises where the said business hath heretofore been carried on under and by virtue of a certain indenture of lease bearing date &c. and granted to them by (*lessor*) of &c. for a term of years from the day of *And whereas* the said parties to these presents have agreed to become partners upon the terms and conditions hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said agreement each of them the said A. B. C. D. E. and F. doth hereby for himself his heirs executors and administrators covenant with the

No. CCCXX.

*Between
Merchants.*

Dissolution.

No. CCCXXI.

*Between
Bankers.*Recital of
former copart-
nership.Agreement for
a copartnership.

No. CCCXXI. others and each and every of the others of them their respective
Between executors and administrators in manner following (that is to say)
Bankers.

Commence-
 ment and du-
 ration.

Where to be
 conducted.

1. That the said copartnership shall commence from the
 day of next and shall continue for the term of
 years subject to such limitations and restrictions as are herein-
 after more particularly expressed And that the said trade or
 business shall be carried on in the messuage or premises where
 the same hath heretofore been carried on or at some other place
 or places which shall be agreed upon by the said partners or
 the major part of them and that the same shall be carried on
 under the firm of .

Capital.

2. That the capital or joint stock shall consist of £ to
 be forthwith brought in in the following shares and proportions
 (that is to say) the sum of £ being three twelfths of the
 said sum of £ by each of them the said A. and B. the
 sum of £ being two twelfths of the said sum by each of
 them the said C. and D. and the sum of £ being one
 twelfth by each of them the said E. and F. Provided that out
 of the sum of £ to be advanced by the said A. and B.
 the sum of £ should be retained and accepted by them
 the said A. and B. as and for the consideration to be paid
 for the lease and fixtures of and in the said messuage and
 premises.

If not brought
 in to carry in-
 terest.

3. That the said capital shall at all times during the conti-
 nuance of the said copartnership be employed solely for the
 purposes of the partnership and no part thereof shall be dimi-
 nished or taken out of the said joint trade or employed by any
 of them the said A. B. C. D. E. and F. in any other trade or
 business whatsoever And that if any one or more of the said
 partners shall neglect or refuse to bring in his or their share or
 shares at the time when he or they ought to bring in the same
 the amount of such share or shares or such part or parts thereof
 as shall not be brought in shall be placed to the debit of such
 partner or partners and shall carry interest at the rate of 5*l.* for
 every 100*l.* by the year.

4. That each of the said parties shall be at liberty to draw
 out &c [see *General Precedent*, Art. 2].

Interest of the
 partners.

5. That each of the said parties shall have a several right
 title and interest in and to the said capital or joint stock in-
 cluding the said lease and fixtures and all the profit thereof
 which from time to time shall belong to the said copartnership
 according to the shares and proportions in which the said sum

of £ is to be advanced and made up by them respectively. No. CCCXXI.

*Between
Bankers.*

6. That if either &c. [*bring in money above his share of the capital, see General Precedent, ante, p. 682, note (b).*]

7. That the rent taxes and repairs of the said messuage or tenement and office where the business shall be conducted the salaries and wages of clerks and servants the postage of letters and all charges damages and expenses which shall or may happen to or be laid out or expended by the said partners or any of them in and concerning the said partnership trade shall be borne and paid by and out of the said partnership effects and the gains and profits thereof and in case there shall be any deficiency then by the said copartners according to their several and respective shares and proportions (a).

Expenses, &c.
of the joint trade
to be borne by
the parties.

8. That the said E. and F. shall devote the whole of their time to the business of the copartnership And shall (unless prevented by sickness or any reasonable cause with the consent of the other partners) give their attendance at the banking house for the time being from the hour of in the morning until the hour of in the afternoon of every day in the year Sundays Good Friday and Christmas-day excepted.

Attendance of
the junior part-
ners.

9. That the said A. B. C. and D. shall not be obliged to attend to the business of the said copartnership any further than they shall respectively think proper but that as far as they shall attend thereto they shall carry on and conduct the same for the greatest benefit and advantage of the copartnership.

Of the senior
partners.

10. That each of them the said copartners shall be true and faithful to each other in all their dealings and transactions in and about the business of the said copartnership.

11. That the said copartners respectively shall by themselves or their clerks respectively from time to time during the continuance of the said copartnership enter or cause to be entered into proper books to be kept for that purpose all monies received and paid by them And also such other matters and things as are usually entered in bankers' books so as to manifest the proceedings and state of the said copartnership.

Accounts kept.

(a) In the case of a country bank, say, "That an account shall be opened and a correspondence established in London at the banking house of at or in or at such other banking house as the said parties or the major part of them shall mutually agree upon for the purpose of negotiating and transacting the agency business or the town business of the said copartnership."

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*Between
Bankers.*Books, &c. kept
in banking
house.Signing bills,
&c.Bills not to be
signed without
consent of the
firm.No money to be
lent by the firm
to any partner.No money to be
lent, &c. by any
partner.

12. That all books bills securities and other writings relating to the said copartnership shall be kept in the banking house for the time being open to the inspection of all the said partners.

13. That all bills drafts promissory notes and all acceptances and indorsements thereon and all receipts payments letters or other matters and things relating to the said banking business shall be signed in the name or style of the said firm by some one or more of the said partners or by some acting or confidential clerk appointed by the said copartners or the major part of them for that purpose.

14. That neither of the said copartners shall or will without the consent of the others of them or the major part of them sign any bill draft or promissory note And that if any one or more of the said copartners shall at any time during the continuance of the said copartnership draw accept or indorse any bill note or other security in the name of the said firm without the consent of the others of them or the major part of them the said partners first had and obtained for that purpose such note or security shall be deemed to be given on the separate account of the said partner or partners so drawing accepting or indorsing the same and he or they shall accordingly pay satisfy and discharge the same out of his or their own separate estate or estates and shall indemnify (a) and save harmless the others and each of the others of them their and his estate and effects respectively from and against the payment thereof and from and against all actions suits costs damages and expenses on account thereof.

15. That no money shall be lent or advanced to any of the said partners without the consent of all the other copartners first had and obtained and that none of the said partners shall at any time during the continuance of the said copartnership borrow receive or take up any money on account of the said copartnership without bringing the same into the stock of the said copartnership.

16. That neither of the said parties shall at any time during the continuance of the said copartnership without the consent of the other copartners or the major part of them lend any money or effects belonging to the said copartnership or give bills on account of the said copartnership or take hire or dismiss any clerk or servant to be employed in and about the business of the copartnership or compound or release any debt or deliver up any

(a) As to the necessity of this provision, see Pref. sect. 11, *ante*, p. 678.

security which shall from time to time belong to the said copartnership without receiving the full amount of the same debt or speculate in the public funds or enter into any bond judgment or recognizance or do any other act matter or thing whatsoever other than in the fair and regular course of business by means whereof the said copartnership stock or any part thereof may be seized attached or otherwise prejudicially affected.

No. CCCXXI.
*Between
Bankers.*

17. That in case any of the said parties shall at any time during the continuance of the said copartnership have less than his share in the copartnership stock and on request by any one or more of the said copartners shall refuse or neglect to make up the deficiency forthwith or in case any one or more of the said parties shall draw indorse or accept any bills contrary to the provision hereinbefore contained in that behalf or shall willingly do or omit any matter or thing whatsoever contrary to the true intent and meaning of these presents whereby in the judgment of the other copartners or the major part of them the said joint trade may possibly be in any manner prejudiced it shall be lawful for the said copartners or the major part of them and they are hereby expressly authorized and empowered to give to the party so offending notice to be left at his residence or affixed in some conspicuous part of the counting house of the said copartnership declaring a dissolution and immediately thereafter or at any future time as shall be named in the said notice the said copartnership shall absolutely cease and determine as to the party so offending in like manner as if he were dead and the partners giving such notice shall be at liberty (unless the party to whom the same be given require the same to be referred to arbitration) to advertize such dissolution in the London Gazette And the said copartners shall in such case make provision for the speedy settlement of the accounts and also in case the said joint concern shall then be solvent for indemnifying the said party in the same manner as is hereinafter directed in the event of the decease of any partner.

Dissolution for
misconduct.

18. That on the day of and the day of in every year a full and general account shall be made and taken of all and singular the monies credits and effects which shall be then belonging to the said copartnership and of all such debts as shall be due and owing from the said copartnership to any person or persons whatsoever And all such other matters and things as are usually comprehended in such accounts and shall be necessary to manifest the state of the said joint trade And that each of the said parties shall state his objections if any to the said account

Half-yearly
accounts.

No. CCCXXI. within days after the same shall be delivered to or left for him in the counting house of the said copartnership and if such objection cannot be amicably settled by and between the said parties then the item or items objected to shall be determined by the majority of the said copartners or referred to arbitration according to the provision hereinafter contained in that behalf And the said account shall after that time be considered as settled and the same shall be signed by all the parties and the said copartners shall afterwards be bound and concluded by such half-yearly accounts unless some error to the amount of £ shall appear therein within calendar months from the settlement thereof respectively And in that case the account or accounts shall be opened and unravelled so far only as relates to the error or errors which shall have appeared therein as aforesaid.

Division of profits. 19. That immediately after closing every such half-yearly accounts as aforesaid the clear and net profits of the said joint trade shall be divided between them according to their respective shares and interests.

Liberty to assign shares. 20. That any one of the said partners for the time being shall be at liberty to dispose of and transfer the whole or any part of his share or interest in the said copartnership to any person or persons whomsoever in case such person or persons shall be approved of by any writing under the hands or hand of all the other of the said copartners but not otherwise And that such person or persons to whom such disposition or transfer shall be made with such approbation as aforesaid shall thenceforth become and be a partner or partners in the room or stead of such partner or partners so disposing of or transferring the whole or any part of his or their share or shares and interests of and in the said copartnership to the extent of the shares or interests which shall be so disposed of and transferred And shall be subject and liable to and shall abide by and perform all the several covenants declarations stipulations and agreements in these presents (or so far as the same shall be then applicable and practicable) in the same manner in all respects as the partner making such disposition and transfer was or otherwise would have been subject or liable to or bound to abide by and perform the same according to the true intent and meaning of these presents.

Liberty to leave shares by will. 21. That either of the said parties shall be at liberty by his last will and testament to nominate a son [or "a nephew &c." as the case may be] to succeed to his share in the said copartnership and the capital or joint stock and the future gains and profits

thereof provided that no person so appointed shall succeed to the share of the party so appointing under this provision unless at the time of such nomination he shall be at the age of twenty-one and shall within one calendar month next after such nomination signify his intention to succeed to such share to the continuing partners by some writing under his hand to be given to them or left for them in the counting house where the said copartnership shall be carried on for the time being.

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*Between
Bankers.*

22. That in case any person shall succeed any of the said copartners in the said copartnership business under this last mentioned provision he shall be a partner in the said joint business in respect of such share and shall be entitled to such share upon the same terms and conditions and with under and subject to the same benefits advantages and powers provisions and restrictions duties regulations and agreements in every respect and in the same manner as the party so appointing would have been entitled and subject to the same if he had lived and remained a partner in respect thereof And if at any time during the continuance of this copartnership there shall be a vacancy in the firm occasioned by death or otherwise the remaining partners shall be at liberty and have full power to admit another partner into the said copartnership in the place of the party so dying or leaving subject nevertheless to the same terms and conditions as are hereinbefore in that behalf contained.

Liberty to admit new partners.

23. That with all convenient speed after any person or persons shall be so admitted a partner or partners under the provisions hereinbefore in that behalf contained such deeds of covenant and other deeds acts matters and things shall be prepared made done and executed by and between the said parties as counsel shall reasonably advise or require for placing the admitted partner or partners in the situation of the party in respect of whose share or shares he or they shall be admitted and for subjecting such partner or partners to the covenants and agreements herein contained.

24. That in case any of the said parties shall be desirous to retire from and quit the said copartnership at the end of the first years thereof it shall and may be lawful for him or them so to do upon giving months' previous notice in writing to the other partners of such his or their intention and upon his entering into a bond (to be prepared at his or their own expense) to the other partners in the penalty of £ conditioned for the payment of £ in case the partner or partners so quitting

Retirement of any partner.

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*Between
Bankers.*

shall either alone or in copartnership with any other person or persons carry on the business of a banker at any time afterwards and during the continuance of the copartnership hereby established in the city of or within miles distance in which case the partner or partners so quitting the said copartnership shall be entitled to receive no more than the balance of capital and profits which appeared due to him or them respectively on the then last day of settling the copartnership account without any interest thereon to the time he or they shall so quit the said copartnership and without having any allowance for profits (save and except he may be entitled to subsistence money not exceeding £) and that the continuing partners shall duly execute and deliver a bond at their or his expense for payment to the said partner or partners so quitting his or their respective executors or administrators of the amount of such balance with interest for the same after the rate &c. from the time of his or their quitting the said copartnership within calendar months then next ensuing by four equal payments (that is to say) &c. and that in case the said copartnership concern shall appear to be then solvent and fully competent to the discharge of all lawful demands thereon then such continuing partners shall if required enter into a bond at their expense in a reasonable penalty for indemnifying and saving harmless the partner or partners so quitting and his and their respective heirs executors and administrators from and against all and every such debts and engagements as shall be then due owing or subsisting by from or with regard to the said copartnership estate (a).

(a) If it be so agreed, add, "That in case the said A. [*or 'B. &c.' as the case may be*] at any time before the time hereby limited for the expiration of the said term of years shall be desirous of retiring and relinquishing the said business and shall assign and give up his share and interest in the said joint trade to the said other copartners or the partners for the time being Then and in such case it is hereby declared and agreed by and between the parties hereto that the said other copartners or the partners for the time being shall and will well and truly pay or cause to be paid unto him the said A. or his assigns an annuity or clear yearly sum of £ during the life of A. [*or 'B. &c.'*] by four quarterly payments on the day of and the &c. free from all deductions whatsoever And also the sum of £ as and for the capital stock of the said A. in the said joint trade within years thereafter And further that they the other copartners or the partners for the time being shall and will upon the request of the said A. execute and deliver unto the said A. a bond in a sufficient penalty for payment of the said annuity or yearly sum of £ ."

25. That if any of the said parties shall die before the expiration of the said copartnership the executors administrators or assigns of such deceased partner shall have and receive from the surviving partners or surviving partner the value of the clear balance which on the last half-yearly account shall appear due and owing unto the deceased partner together with an allowance of £ per cent. thereon from the last settlement of accounts in the lieu of any profits that may have accrued since such last day of settlement And that such surviving partners or surviving partner shall duly execute and deliver a bond at their expense for payment to the executors or administrators of the said deceased partner or partners of such balance share or allowance with interest on the gross amount thereof from the day or respective days of his or their decease by three equal instalments in manner following (that is to say) one third thereof at the end of calendar months from the time of the decease of such partner as aforesaid with interest one other third thereof at the end of calendar months with like interest and the remaining other third thereof at the end of calendar months And that such surviving partners or surviving partner shall by a bond or obligation in a sufficient penalty become bound to the personal representatives of the deceased partner or deceased partners for effectually indemnifying the personal representative of such deceased partner or deceased partners from and against all and every the debts and engagements which shall be then due owing or subsisting by from or with regard to the said copartnership upon the personal representatives of such deceased partner or partners transferring assigning and releasing to the surviving partners the share and interest of the deceased partner in the copartnership stock credits effects and profits unto the said continuing partners [save and except and without prejudice to the right and interest of the said representatives under the bond so agreed to be executed] (a).

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*Between
Bankers.*Dissolution by
death.

(a) If it be so agreed, add, "That in case either of the said copartners dying before the expiration of the said term of years shall leave a widow (child or children &c. *as the case may be*) him surviving then the surviving or continuing partners for the time being shall and will during the life [or 'lives'] of such widow (child or children and the life of the survivor of them) or during the remainder which shall then be to come of the said term of years whichever shall first happen well and truly pay or cause to be paid unto the said widow (child or children) the yearly sum of £ by four equal quarterly payments in such manner as the party so dying shall by his

No. CCCXXI.

*Between
Bankers.*Dissolution by
reason of
lunacy.Continuing
partners to sup-
ply deficiency
of capital.Dissolution by
effluxion of
time.

26. That if any of the said copartners shall at any time be found lunatic (*a*) Then and in every such case it shall be lawful for the continuing partners or the major part of them at any time thereafter by any writing under their hands to be delivered to the committee of the said lunatic or left at his last or usual place of abode to determine and dissolve the said copartnership as to such partner and to take to and purchase his share in the copartnership capital and effects and make such arrangements in all other respects in the event of such lunacy as is hereinbefore mentioned in the event of the decease of any partner.

27. That when and so soon as the said copartnership shall be determined as to any one or more of the said copartners by his or their death or otherwise before the expiration of the said term of years the original and also the derivative shares shall belong to the surviving or continuing partners in proportion to their original shares in the capital stock of the said copartnership and the surviving and continuing partners shall in the same rate and proportion replace and supply the part or share or several parts and shares of and in the capital stock or sum of £ as aforesaid which shall be drawn from the said copartnership by or on account of the party so dying or leaving.

28. That upon the expiration of the said copartnership by effluxion of time a general account or rest in writing shall be made and taken by and between the present and any surviving and continuing partners of all and singular the monies credits estate and effects whatsoever which shall be due and owing or belonging to the said copartnership and also of all debts due and owing by or from the said copartnership to any person or persons whomsoever (*b*) And upon the closing and settling the accounts each of them the said partners shall forthwith pay or make provision for the speedy payment and satisfaction of their respective shares of all such debts as are due and owing by the

last will and testament direct and appoint and the surviving or continuing partners shall execute a bond in proper form for payment thereof."

Or, if it be so agreed, add, "And in default of appointment the executors and administrators of the partner so dying shall have and enjoy his part or share in the said joint trade and the monies debts and effects thereof either for himself or themselves or in trust for any other person or persons as in such writing or will shall be directed *Provided nevertheless*" &c. (*Copartnership between Wharfingers*, Art. 30.)

(*a*) As to the necessity of this stipulation, see Pref. sect. 13, *ante*, p. 679.

(*b*) If it be agreed that the continuing partners shall purchase the shares of those retiring, then, instead of what follows, say, "Then the share or re-

said copartnership as can or may be immediately discharged and shall lay out and invest in the purchase of capital stock in the Three per cent. Consolidated Bank Annuities in the joint names of some trustees to be appointed by them so much money as shall be sufficient to answer pay and satisfy all outstanding notes and other debts due and owing by the said copartners and shall from time to time sell and dispose of the same stocks or funds or a sufficient part thereof for the discharge of the said outstanding notes and debts last mentioned when and as the payment of the same shall be demanded and required And then the residue of the effects together with the debts and monies due and owing to the said copartnership shall be parted and divided between the said partners in proportion to their respective shares and interests and after such partition or division shall be made the said surviving and continuing partners shall reciprocally assign to each other the respective shares and interests which shall be allotted to them of and in the said credits sums of money and effects with full power to recover and receive the same such assignments being prepared at the expense of the party requiring the same And that after such division and assignment neither of the said surviving or continuing partners shall or will release or discharge the credits which shall be allotted to the other or others of them without the consent of the person or persons to whom the same shall be respectively allotted his her or their executors or administrators.

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*Between
Bankers.*

29. That upon the entire or partial dissolution of the said copartnership under any of the provisions herein contained a notice of the determination of such copartnership shall be signed by all the partners and inserted in the London Gazette and sent to the several customers of the said copartnership And that if any of the said partners shall neglect or refuse for the space of days after being thereunto requested by any other or others of them to sign such notice or shall by reason of lunacy illness or

Notice of dissolution.

spective shares of the partners retiring from the said copartnership may be taken by the other of them the said partners or the partners or partner for the time being and the amount of the value of the retiring partner or partners of and in the said partnership property shall be paid to him or them or his or their executors or administrators by the surviving or continuing partners within calendar months after such value shall be ascertained with interest for the same in manner following &c. and the continuing partners shall give the like bond security and indemnity as is hereinbefore provided in the event of the decease of either of the said parties."

No. CCCXXI. absence from the kingdom or otherwise be unable to sign the same Then and in every such case it shall be lawful for the other partners to sign such notice in the name and as the attornies of the partner or partners so neglecting refusing or being incapable to sign the same.

Differences to
be decided by
majority.

30. That in all questions and differences which may happen to arise between the said partners touching and concerning the said joint concern or the management or regulation thereof the determination of the major part shall be final unless the others of them or any of them shall be desirous of referring such matters to arbitration according to the provision hereinafter in that behalf contained and shall within days after such determination give notice of such his desire.

Arbitration
clause.

31. That if any doubt difference or question shall at any time hereafter arise or happen between or amongst the said parties to these presents or any of them or between them and the executors or administrators of the other or others of them touching anything relating to any account rest valuation or appraisement hereinbefore provided for or touching the construction of these presents or any other matter or thing relating to the said copartnership or the business thereof and such doubt or difference shall not be decided or settled between or amongst themselves within one calendar month after the same shall have arisen Then and in every and any such case and when and so often as the same shall happen such doubt difference or question shall upon the request of any of the said copartners or their or any of their executors or administrators from time to time be reduced into writing and be referred to the arbitration of three indifferent and competent persons the one to be chosen by one party in difference and the other of them by the other party and the third by the two persons who shall be first chosen within calendar months next after such request and the award order and determination of the said three persons or any two of them in the matter or matters referred to them shall be binding and conclusive upon all the parties in difference and their respective heirs executors administrators and assigns and shall be performed observed and kept by them accordingly without any further suit or trouble whatever so as such award order or determination be made or set out in writing under the hands and seals of such three persons or any two of them within the space of twenty-one days next after all the said three persons shall have been so appointed as aforesaid And such referees or any two of them

shall have full power and authority if they shall think fit and without any reason to be assigned for that purpose to dismiss any one or more of the parties to such reference from the said copartnership and to prescribe the time and manner of such dismissal And in case any of the said parties to whom such request shall be given as aforesaid shall for the space of two calendar months next after such request refuse or neglect to nominate or appoint a referee it shall and may be lawful for the party making such request to choose some indifferent and competent person to act as referee on the part of the party so refusing or neglecting and the two persons who shall be so chosen as referees as last hereinbefore is mentioned shall thereupon choose an umpire between them And the award or determination of such referees shall to all intents and purposes be as valid effectual binding and conclusive as if the said person so chosen referee had been nominated and appointed by the party to whom such request shall have been given *In witness &c.*

No. CCCXXI

*Between
Bankers.*

No. CCCXXII.

Copartnership Deed between Brewers.

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part E. F. of &c. of the third part and G. H. of &c. of the fourth part *Whereas* the said A. B. hath for some time since the death of his father exercised and carried on and doth now carry on the trade of a common brewer in the messuage or tenement and warehouses &c. of him the said A. B. situate in &c. *And whereas* the said A. B. hath agreed to admit the said C. D. E. F. and G. H. into partnership with him in manner hereinafter mentioned *And whereas* the said parties have agreed to make up in money and effects a capital stock of £ to be employed in the copartnership business and the sum of £ being four ninth parts of that sum (the whole in nine parts to be divided) are contributed by the said A. B. the sum of £ being three ninth parts of the same sum are to be contributed by the said C. D. the sum of £ being one ninth part thereof by the said E. F. and the sum of £ being the remaining ninth part of the same sum by the said G. H. *And whereas* the said A. B. is possessed of the stock and effects employed in the said trade consisting of such cash debts secu-

No.
CCCXXII.*Between
Brewers.*Recital that
business is
carried on.Agreement to
admit the others
as partners.Capital stock
to consist of
£Valuation of
the stock of
A. B.

No. CCCXXII. Between Brewers.	rities for money and such horses drays casks beer malt hops coals goods implements utensils and public houses held under leases and such other articles as are respectively specified and valued in a book which is called the Rest book and which hath been signed by the said parties in testimony of their approbation of the accuracy of the said book and of the valuation therein
Approved by the parties.	contained <i>And whereas</i> the said A. B. was on the day of
Debts due to A. B.	entitled to several debts or sums of money due and owing
Debts due from A. B.	to him in his said trade or business all which are specified in the said book and are to be considered as part of the said capital of £ and as belonging to the said copartnership <i>And whereas</i>
	on the said day of several debts were due and
	owing from the said A. B. in the course of the said trade and the
	said debts and sums of money last mentioned appear in the said
	Rest book and the valuation therein comprised is accordingly
	framed with a proportionate deduction from the sum total of the
	valuation of the said articles as specified and valued in the said
	Rest book and therefore the said debts and sums of money so
	due from the said A. B. as aforesaid are from the commence-
	ment of the said partnership to be considered as debts due from
	the same and so payable out of the partnership property <i>And</i>
	<i>whereas</i> it hath been agreed that the sum of £ part of the
	value of the several articles specified and valued in the said
	Rest book as aforesaid and making four ninths of the said capital
	stock of £ shall be accepted and deemed as and for the
	full contribution for the shares of the said A. B. of and in the
	same capital stock And that the residue of the value of the same
	articles shall be paid to the said A. B. by and out of the said
	several sums of £ £ and £ to be contributed
	by the said other parties as aforesaid <i>And whereas</i> the said
	other parties have according to their several proportions paid
	the surplus of the value of the said articles to the said A. B. or
	secured the payment thereof to him to his satisfaction And also
	have to the satisfaction of the said A. B. contributed to the said
	capital stock of £ the residue of the said several sums of
	&c. so agreed to be contributed by them the said C. D. &c.
	<i>And whereas</i> the said parties have agreed that the said partner-
	ship shall commence from the day of now last past
	for the term of years under and subject to the conditions
	limitations &c. hereinafter expressed and declared <i>Now this</i>
	<i>Indenture witnesseth</i> and it is hereby declared and agreed that
	the said capital stock of £ consisting of the several articles

and sums of money so contributed as aforesaid shall from the said day of now past be the capital partnership stock in trade of the said A. B. C. D. E. F. and G. H. and shall belong to them in the proportions before mentioned And that they the said parties shall be from the said day entitled to the profits of the said trade or business and bear the losses thereof in the same proportions subject nevertheless to the provisions hereinafter mentioned and in consideration of the premises each of them the said several persons parties hereto severally for himself separate and apart from the others of them doth hereby for himself his heirs executors and administrators covenant and agree with the others and other of them the said several persons parties hereto and each of them their and each of their executors administrators and assigns That the said several persons parties hereto shall continue and be copartners for the term of years subject nevertheless to such dissolution or determination of the said partnership as hereinafter stipulated That the said copartnership trade shall be carried on upon the premises &c. That two leases shall be granted for the same premises namely one of the freehold and another of the leasehold part by the said A. B. to one or more person or persons to be nominated by the said C. D. E. F. and G. H. and to the executors and administrators of such person or persons for such term of years as shall make the leases co-durable with the said partnership for which purpose the said leases are granted but in trust for them the said parties And in the said lease of the freehold part shall be reserved to the said A. B. his heirs and assigns the yearly rent of £ and in the lease of the leasehold part the yearly rent of £ and the proper and reasonable covenants usual between landlords and tenants particularly a provision for insuring and keeping insured the said premises at the costs and expenses of the said copartnership That such other parts of the said capital stock as for the time being shall be exposed or liable to be damaged by fire shall from time to time during the said partnership be insured and kept insured at the expense of the said capital stock or the profits thereof in one or more of the public offices of the City of London and Westminster That they &c. [*pay rent taxes &c. see General Precedent, Art. 5*] That the said A. B. shall not be compelled to attend to the business of the said copartnership more than he thinks fit And that the said other parties shall according to their respective skill and abilities attend to manage superintend and direct the business of the said

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CCCCXII.
Between
Brewers.

As to profit and
loss proportionably.

Mutual cove-
nants.

Leases of pre-
mises to be
granted to
trustees for
partners.

Premises to be
insured and
kept insured.

Attendance.

No.
CCCXXII.
*Between
Brewers.*

Allowance to
E. F. and G. H.

Incoming
parties to take
out £
weekly.

Parties to be
faithful, &c.

Neither party
except A. B.,
to be at liberty
to dispose of
his share.

Not to take ap-
prentices, &c.
without con-
sent.

To keep books
of account.

partnership and employ themselves constantly and diligently in conducting the affairs thereof And in consideration of the care and attendance which the said E. F. and G. H. are to give to the affairs of the said partnership they the said E. F. and G. H. while they continue partners and after the death or dismissal of one of them then the other of them alone shall have the use and occupation of the messuage or tenement belonging to the said brew-house and premises free of all rent and taxes now in the occupation of the said A. B. under such regulations as they the said E. F. and G. H. shall mutually agree upon between themselves but with an exception to the said A. B. his executors and administrators for the sole and separate use and benefit of him and them of those two rooms &c. And also of &c. And also the said C. D. while he continues to be a partner shall have the sole use and occupation of the messuage or tenement with the offices and appurtenances thereto as the same are now occupied by him And also that each of them the said C. D. E. F. and G. H. shall during the continuance of the said partnership be allowed to take on account weekly and every week the sum of £ And also shall be provided with coals and candles at the expense of the said partnership stock And also that &c. [*parties shall be faithful &c. see General Precedent, Art. 4*] And also that neither of the said parties &c. [*to use partnership effects &c. for private advantage except the weekly allowance*] And also [*shall not follow any other trade &c.*] And also &c. [*shall not sell or mortgage &c. his share*] save and except that it shall be lawful for the said A. B. to sell all or any part of one of his four ninth parts to I. K. now employed as a brewer in the said brewery And also that neither of the said parties while he shall continue to be a partner in the said partnership concern shall without the consent of the major part of his partners take any apprentices other than and except one son of each of the said partners And also that neither &c. [*contrary to the will and direction of the major part &c. shall lend money release or compound debts &c.*] And also &c. [*shall not take or dismiss clerks &c. see General Precedent*] And further that they the said partners respectively during the continuance of the said partnership by themselves or their clerks shall daily make true and perfect entries in proper books kept for the purpose of all monies received &c. and also of all such other matters as are usually written and made in the account books of brewers And also &c. [*books bills &c. to be kept in counting house*] And also &c. [*shall pay private debts and indemnify the*

firm &c.] And also [shall make rests or balances on appointed day, see General Precedent] And also that within one calendar month after every such account notice thereof shall be given to the partner or partners who shall not have been present at the taking of such account such notice to be left at his usual place of residence And that each of the said partners shall state his objections if he have any to the said account in writing under his hand to be entered at the foot of the said account and such objections if they cannot be amicably settled by the partners among themselves shall be referred to arbitration pursuant to the provision hereinafter contained in that behalf And unless such objection shall be made within the time hereinbefore limited the account so made out shall be considered as settled and signed by all the parties accordingly And upon the final settlement of every such account all the net profits and gains of the said partnership shall from time to time be divided between the said partners in the proportions hereinbefore mentioned after deducting the monies which shall have been received weekly by the said C. D. E. F. and G. H. And further that &c. [money left in the trade shall bear interest &c. see ante, Copartnership between Merchants, Art. 5] Provided always and it is hereby declared and agreed that if the said A. B. shall be a partner at the time of his decease then any person or persons whom the said A. B. shall appoint by deed or will or any writing in the nature of a will or in default of such appointment the executors or administrators of the said A. B. shall be admitted into the said partnership under the same covenants conditions and agreements as are contained in these presents on behalf of the said A. B. And also in case either of them the said C. D. E. F. and G. H. shall die during the continuance of this partnership and shall have a son living and shall by his last will appoint such son to be a partner in his stead or place in that case the son so appointed shall from the time of the death of the said C. D. E. F. or G. H. be entitled to the same share of the said C. D. &c. of and in the said partnership trade or business during the residue of the said term if the said son shall so long live but such son unless requested by the surviving or continuing partners shall not take any active part or interfere in the conduct management control or direction of the said trade Provided always that if either of them the said C. D. E. F. or G. H. shall die without leaving a son to be substituted in his place or the son shall die after having become a partner in any such case the share of the partner so dying shall

No.
CCCXXII.
Between
Brewers.

Pay private
debts, &c.

Objections to
accounts how
to be settled.

Net profits to
be divided pro-
portionably.

Provision as to
the death of
A. B.;

and of the other
parties.

No.
CCCXXII.
*Between
Brewers.*

as to profit and loss cease at the expiration of months after the decease of such partner *And it is hereby further* declared and agreed that the share of each partner so ceasing as to profit and loss of or in the said partnership stock as to so much of the said share as shall not break in upon the said capital stock shall be paid to the executors or administrators of such deceased partner within one calendar month after his decease and so much thereof as shall not be so paid shall be valued according to the annual rest or account and the surviving partner or partners shall enter into one or more surety or sureties to be approved by the executors or administrators of such deceased partner as aforesaid for the payment of the principal sum at which the share in the said partnership stock shall be valued and of interest for the same at the rate &c. and in the manner following (that is to say) by five annual instalments the first to be paid at the end of one year from the day on which their respective shares shall have ceased as to profit and loss And from the determination of the interest of the said C. D. E. F. and G. H. by death as aforesaid his share of and in the said capital stock shall become the property of the then surviving or continuing partner or partners in proportion to their respective shares subject nevertheless to the payment of the instalments as aforesaid *And further* that if any one or more of the said parties shall be minded or desirous of withdrawing himself or themselves from the said copartnership at the expiration of years from the day of and shall give &c. [*Notice &c. see the two last Precedents*] Then &c. And the share or shares of the said partner or partners shall be valued &c. and secured and paid off as in manner aforesaid *And also* in case any one &c. [*dissolution for misconduct, see last Precedent*] *And* at the expiration of the aforesaid term of years or other sooner total determination of the said copartnership all the debts which shall be owing by or on account of the said copartnership including debts owing to a deceased or retiring partner for their respective shares shall be discharged by and out of the partnership effects or a fund to be set apart in the hands of some bankers in London for answering the same when due and demanded And that all the goods chattels and other effects of the said partnership except debts owing to the same shall be disposed of by public auction to the highest bidder with liberty to any one or more of the said partners to become a purchaser or purchasers thereof at such auction And that the money arising from such sale and also all other monies in hand

Parties to be at liberty to withdraw from the partnership.

Discharge of debts at the expiration of term.

Stock in trade to be sold by public auction.

belonging to the said partnership shall be divided between the said partners in their several proportions And that the debts owing to the said copartnership and the securities for the same and also the surplus if any of monies which shall remain after the liquidation of the debts owing from the said copartnership shall be assigned to some person to be appointed for that purpose by the major part of the said partners with full power to collect receive and recover the same and with direction to divide the money which shall be received from time to time amongst the partners in proportion to their respective shares And then the said partners after such sale as aforesaid and after dividing the monies belonging to the said partnership shall execute mutual releases to each other concerning any actions or suits which shall or may be commenced or brought in relation to the said partnership And in case &c. [*Clause for reference to Arbitration, see General Precedent, Art. 18, ante, p. 686.*]

No.
CCCXXII.
*Between
Brewers.*

No. CCCXXIII.

Articles of Copartnership between Two Attornies, where one is an incoming Partner.

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CCCXXIII.
*Between
Attornies.*

(*Variations where a Premium is given.*)

Obs. A partnership between attornies, where one of them is not duly qualified, is illegal, being within the 22 Geo. 2, c. 46, s. 11 (now the 6 & 7 Vict. c. 73, s. 32); *In re Jackson*, 1 B. & C. 270; *In re Clark*, 3 D. & R. 260; *Hopkinson v. Smith*, 1 Bing. 13; S. C. 7 Moore, 242. See *Candler v. Candler*, Jac. 225.

This Indenture made &c. Between A. B. of &c. gentleman one of the attornies of her Majesty's Court of at Westminster of the one part and C. D. of &c. gentleman one other of the attornies of her Majesty's Court of of the other part Whereas the said A. B. for the consideration hereinafter mentioned hath agreed to admit the said C. D. to be a copartner in profit and loss in the proportions hereinafter mentioned with him the said A. B. in the business or profession of an attorney and of a solicitor and conveyancer for the term &c. the same to be managed and carried on at their dwelling-house and office in aforesaid in the joint names of the said A. B. and C. D. subject to and under the several covenants and agreements hereinafter con-

Recital of
agreement to
take into part-
nership.

No.
CCCXXIII.
Between
Attornies.

Testatum.

A. B. and C. D.
mutually cove-
nant to become
partners.

Yearly sum of
£ to be
allowed to A. B.
for rent and
taxes.

tained *Now this Indenture witnesseth* That in pursuance of the said agreement and (a) in consideration of the covenants herein-after contained and also that the said C. D. hath agreed to give his whole time to the management of the said business and to employ his utmost skill in promoting and conducting the same each of them the said A. B. and C. D. doth hereby for himself his heirs executors and administrators covenant and declare with and to the other of them his executors and administrators in manner following (that is to say) (b) :

1. That they the said A. B. and C. D. shall and will become continue and be copartners in profit and loss in the proportions hereinafter mentioned in the said business and profession of attornies in the carrying on prosecuting managing and defending all and every suit at law or in equity which he the said A. B. is already concerned in or which they the said A. B. and C. D. or either of them at any time during the said copartnership shall be concerned in and in perusing drawing and settling all and every such deeds titles conveyances and other instruments whatsoever which they the said A. B. and C. D. shall be employed about during the said copartnership and in all other business common or incident to an attorney solicitor or conveyancer for the term of years to be carried on in the same manner as the same is now carrying on there and that the style of the said copartnership shall be B. and D.

2. That the said A. B. during the continuance of the said term shall be allowed yearly and every year at and after the rate of £ per annum for and towards the rent and taxes of the office and other parts of the dwelling-house where the said business is now carrying on or of any other house which he may hereafter take and for the usual necessary coals candles and attendance of servants and also the usual entertainment of clients

(a) Where a premium is paid, say, “in consideration of the sum of £ paid by the said C. D. to the said A. B. as and by way of premium for the said intended partnership the receipt &c., and in consideration of the covenants hereinafter contained the said A. B. doth hereby agree to admit the said C. D. as his partner and each of them the said A. B. and C. D. for himself” &c. (*see above.*)

(b) If it be necessary, say, “That the capital of the said copartnership shall consist of the sum of £ or such other sum or sums as shall from time to time be wanted for carrying on the said business and the same shall be brought in in the following proportions namely the sum of £ being two third parts thereof by the said A. B. and the sum of £ being the remaining one third part by the said C. D.”

and other persons in anywise relating to the said partnership business And also at and after the rate of £ per annum for the board of (a) W. R. and S. W. during such time as they shall continue to be employed in the said copartnership business and be dieted by the said A. B.

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*Between
Attornies.*

3. That neither of them the said A. B. or C. D. shall or will at any time during the continuance of the said copartnership carry on prosecute or defend any suits at law or in equity or make any conveyance or transact or do any other affairs or business incident or belonging to the profession of an attorney solicitor or conveyancer for any profit or advantage on his own separate account or for or on any other account than for the joint benefit of the said copartnership (save and except which shall be prosecuted carried on and completed on and for the sole and separate account and benefit of the said A. B. and the said C. D. is not to have any part of the share or profit which has arisen or shall arise therefrom).

Neither party
to carry on
business sepa-
rately.

Exception.

4. That they the said A. B. and C. D. shall be entitled to such shares and proportions of and in the profits arising from the said copartnership including the fees received with articulated clerks as hereinafter is mentioned (that is to say) for the first two years of the said term the said A. B. shall be entitled to two thirds thereof and the said C. D. to one third thereof And for the remainder of the said term they the said A. B. and C. D. shall be entitled to the said profits and advantages arising from the said copartnership business in equal moieties share and share alike (b).

Apportionment
of profits,

5. That all debts due and owing on the said partnership account and all losses which shall happen by reason of the said copartnership business and all counsels' fees expenses for sta-

and expenses
and losses.

(a) If it be so agreed, say, "of C. D. in such manner as he hath been usually dieted and also for the board of," *as above*.

(b) Where a premium has been given, and it is so agreed, say, "That in case the profits arising or to be produced from the business of the said copartnership (after making all necessary deductions and allowances as are hereinbefore mentioned) at the end of years shall not amount to the sum of £ being the average calculated value of years profits the said A. B. shall repay to the said C. D. so much as shall make the share of the said C. D. equal to one third of the said sum of £ ." Or, if it be so agreed, say, "In case either of them the said A. B. or C. D. shall happen to die before the expiration of years of the said copartnership then the said A. B. or his executors or administrators shall and may retain the whole of the said premium" [*or "one third &c." as the case may be*].

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*Between
Attornies.*

tionery clerks and writers' salaries and all other charges disbursements and necessary expenses incident to the same shall be sustained and borne by them the said A. B. and C. D. respectively and their respective executors and administrators in the proportions above mentioned (due regard being had to the time when such debts losses and expenses shall happen to be made or contracted) whether in the first two years or the last years of the said term.

All monies to
be deposited in
the hands of
A. B.,
in trust for
joint benefit;
and to supply
C. D. with what
is requisite.

6. That all and every sum and sums of money that shall be received by either of the said parties shall from time to time be deposited and remain in the hands of the said A. B. in trust for the joint use and benefit of both the said parties according to their respective interests and that out of the said monies he the said A. B. shall and will pay and supply the said C. D. with such sums of money as shall from time to time be necessary or expedient for the carrying on and prosecuting the said joint business (a).

Hazard as to
credit by either
after notice.

7. That proper books &c. [see *General Precedent, ante*, p. 683.]

8. That if either of the said parties shall give credit or disburse any sum or sums of money for any particular person or persons whomsoever after having been forewarned by the other of them in writing against giving such credit or making such disbursement such party shall alone stand to the loss hazard and adventure thereof and the share of the said party in the profit of the said business shall stand charged with the same.

Account stated
yearly.
Parties to use
their best en-
deavours to
collect in debts.

9. That the said party shall and will yearly &c. [*state and balance account &c. see former Precedents*] And upon stating and finishing such account as aforesaid shall and will use their joint and utmost endeavours to recover receive and collect in all and every such sum and sums of money due and owing to them and after payment and deduction of all sums of money due and owing from the joint copartnership concern and of such sums as are hereinbefore agreed to be retained as aforesaid they the said parties shall thereupon make partition and division between

(a) Or, if it be so agreed, say, "That all sums of money which shall from time to time be advanced by the said copartners and all sums which shall be received by either of them the said A. B. and C. D. on the copartnership account shall be deposited with Messrs. or any other bankers whom the said copartners shall agree upon That the said A. B. shall be at liberty to draw out of the funds of the said copartnership for his personal expenses the sum of £ by monthly instalments and the said C. D. shall be at liberty to draw out the sum of £ in the same manner."

them of the clear gains and profits of the said copartnership and joint business in the shares and proportions hereinbefore mentioned.

10. That upon the dissolution of the said copartnership by effluxion of time during the lives of the said parties a general account in writing shall be stated and settled between the said parties of all the debts due from and to the said parties and of all the affairs and transactions relating to the said copartnership and upon the completion of such an account the said parties shall forthwith pay and provide for the payment of their respective shares of the debts &c. and after such payment shall make a distribution division and allotment of the partnership credits and effects between them according to their respective proportions and interests therein (a).

11. That in case either of the said parties shall happen to die before the expiration of the said term the survivor shall and will as soon as conveniently may be after the death of such party adjust and make up a perfect and true account in writing of all matters and transactions relating to the said copartnership business and within six months next after the decease of the party so dying shall deliver or cause the same to be delivered unto his executors or administrators and recover receive and get in as soon as may be all and every such debts and sum and sums of money as shall be then owing to the said copartnership and well and truly pay or cause to be paid after a deduction of all debts by them owing on account of the said partnership concern unto the said executors or administrators such sum and sums as shall be then in hand at the death of the party so dying and such part of the outstanding debts as shall appear by the said account to be the share of the party so dying as the same shall from time to time be got in.

12. That in case either of them the said A. B. and C. D. shall be desirous of dissolving the partnership by these presents entered into before the said term of years be expired and shall give to the other of them six calendar months' notice in writing of such his desire the six months to end on the

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*Between
Attornies.*

Expiration of
term.

On death of
either, the other
to state an ac-
count;

and deliver it
to the execu-
tors within six
months.

Retirement.

(a) If it be so agreed, add here, " and the deeds papers writings vouchers and documents belonging or relating to the affairs of the said clients shall be retained by or delivered to the said A. B. or C. D. according as the parties shall have become clients of the copartnership through the interest of either of them the said A. B. or C. D. and in case of doubt or dispute it shall be referred to the client to determine in whose custody the papers shall remain."

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*Between
Attornies.*

day of in the year in which such notice shall be given that then the copartnership hereby created shall cease determine and be utterly at an end anything herein contained to the contrary notwithstanding *Provided nevertheless* that in case the said C. D. shall give such notice as aforesaid an account shall be taken of the debts credits and effects of the said copartnership in like manner as is hereinbefore directed upon dissolution by effluxion of time and the said A. B. shall take upon himself to collect and get in the credits of the said copartnership and pay and discharge the debts thereof and after payment thereof to pay over one third of the surplus of the monies and effects of the said copartnership which shall remain after payment of such debts from time to time as and when the monies shall be so received and shall amount to £ unto the said C. D. his executors or administrators and so soon as the whole of the share of the said C. D. shall have been paid as aforesaid he the said C. D. shall duly assign all the right title and interest of him the said C. D. in the premises And in case there shall be any deficiency in the said copartnership monies and effects to pay and satisfy the debts which shall be due and owing from the same such deficiency shall be made good by the said A. B. and C. D. according to their several proportions of and in the profits and losses of the said copartnership And further that in case of such dissolution by the retirement of the said C. D. as aforesaid all and every the papers books and writings which shall relate to the general business of the copartnership shall remain with the said A. B. he the said A. B. indemnifying the said C. D. his executors and administrators from and against all costs charges and damages which he or they may sustain or be at for delivering up or suffering the said papers to remain with the said A. B. And it is hereby declared and agreed that on the retirement of the said C. D. in manner aforesaid he the said C. D. shall not nor will practise as an attorney or solicitor within miles of aforesaid whether the said A. B. shall continue to reside or practise at or shall remove to and practise at any other place within the said county of And that in case the said C. D. shall wilfully or negligently break or fail to perform this present covenant then he the said C. D. his heirs executors or administrators shall and will immediately thereupon pay unto the said A. B. his executors or administrators the sum of £ as liquidated damages to be deemed and taken in full satisfaction and discharge of such covenant and not in the nature of a

C. D. not to
practise within
a certain dis-
tance.

penalty (a) And in case &c. [see *Arbitration Clause, General Precedent*, Art. 18, *ante*, p. 686.]

In witness &c.

No.
CCCXXIII.
*Between
Attornies.*

No. CCCXXIV.

Articles of Copartnership between Two Surgeons, where one of them proposes to relinquish his Business to the other.

No.
CCCXXIV.
*Between
Surgeons, &c.*

Articles of Agreement made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said A. B. hath for several years followed the profession of a surgeon and apothecary at and for the considerations hereinafter mentioned hath agreed to take the said C. D. into copartnership with him in the said profession and to relinquish such profession or business to the said C. D. upon the terms and conditions and under and subject to the covenants stipulations and agreements hereinafter contained Now this Indenture witnesseth That in consideration of the sum of £ to the said A. B. by the said C. D. paid the receipt of which the said A. B. doth hereby acknowledge and also in consideration of the mutual trust and confidence which the parties respectively repose in each other each of them the said A. B. and C. D. doth hereby for himself &c. covenant &c. See ante, p. 738.

To take into
partnership
and relinquish
business.

Testatum.

1. That they &c. shall and will become and remain copartners in the profession &c. from the day of &c. for the term &c. if they shall so long live.

Mutual cove-
nants.

2. That the style or firm of the said copartnership shall be B. and D.

3. That the said profession shall be carried on at the capital shall consist of the fixtures stock and effects of the said A. B. now used in such profession an account and valuation of which signed by both of them the said A. B. and C. D. hath this day been delivered to each of them.

That Capital stock.

(a) If a premium has been paid, and it is so agreed, say, " *Provided also that in case the said A. B. shall give such notice as hereinbefore mentioned and shall after such dissolution of the said copartnership which shall take place in consequence thereof continue or within years thereafter resume his practice as an attorney or solicitor then and in such case he the said A. B. shall and will immediately thereupon repay or refund the sum of £ unto the said C. D. which he the said C. D. paid to the said A. B. on his admission into the said copartnership.*"

No.
CCCXXIV.
*Between
Surgeons, &c.*

Rent for sur-
gery, &c. to be
borne by the
parties.

Provision as to
apprentices.

No horse, &c.
to be kept at
joint expense.

Net gains to
be divided
equally.

Books of ac-
count.

Cash to be kept
at bankers.

Either party to
indorse notes,
&c. sent to
bankers.

4. That during the continuance of the said copartnership the shop surgery and parlour now used by the said A. B. in his said profession shall be used for the purposes of the said profession and the said copartnership shall pay for the same the annual rent of £ together with the taxes and all outgoings for repairs and insurance.

5. That the said A. B. shall maintain his present apprentice during the residue of his term of apprenticeship and such apprentice shall be employed in the said profession without any remuneration being required for his services therein.

6. That all other apprentices taken by the said parties during &c. shall be articulated to the said C. D. who shall receive whatever premiums may be paid with them and shall at his own expense lodge and maintain them.

7. That no apprentices clerks &c. shall be taken or discharged &c. [See *General Precedent, ante*, p. 689.]

8. That the salaries &c. shall be defrayed and borne by and out of the capital and profits of the said copartnership and if such capital shall be deficient then by the said parties out of their separate estates and in equal shares.

9. That no horse chaise or other conveyance shall be kept by either of the said parties at the expense of the said copartnership.

10. That the said parties shall be entitled to the net gains and profits of the said copartnership profession or business in equal shares and proportions.

11. That proper books of account &c. [*shall be kept* &c. see *General Precedent, ante*, p. 683] and that the said books of account together with letters bills documents papers &c. which shall concern the said copartnership shall be kept at the shop or surgery to be open at all times to the inspection and examination of each of the said parties and that neither of the said parties shall deliver any of the said documents or papers from the shop or surgery save in the orderly course of business.

12. That the cash of the said copartnership beyond what may be sufficient for current expenses shall be kept at the banking house of .

13. That on payment of any bills notes checks or drafts into such banking house as aforesaid it shall be lawful for either of the said parties to make such indorsements as are usual or may be requisite in that behalf but that for any other purposes it shall not be lawful for either of the said parties to make indorsements

on any notes bills or drafts without the consent of the other of them for that purpose first had and obtained.

14. That neither of the said parties shall without the consent of the other of them during the continuance of the said copartnership become bail for any other person or deliver or execute &c. [see *ante*, No. CCCXX. Art. 14, *ante*, p. 717.]

15. That the said party shall at the times during &c. diligently and faithfully employ themselves in and about the business of the said copartnership and shall conduct and manage the same to the best of their skill and abilities.

16. That in case any expenses losses or damages shall through the gross or wilful neglect or default of either of the said parties be incurred or sustained in carrying on the said business of the said copartnership or anywise relating thereto the party through whose default or neglect the expenses losses or damages shall have been incurred or sustained shall pay and make good such expenses &c. out of his separate estate and indemnify the other of them his executors &c. and the stock monies and effects of the said copartnership of and from the same and all actions suits claims and demands whatsoever for or on account of the same.

17. That each of the said copartners shall be just and faithful to the other of them in all transactions matters and things whatsoever relating to the said copartnership and shall whensoever thereunto requested give and render true and just accounts thereof.

18. That neither of the said copartners shall without the previous consent in writing of the other of them employ any of the monies or effects belonging to the said copartnership or engage the credit thereof in any matter or thing except on the account and for the benefit of the said copartnership.

19. That neither of the said copartners shall during the continuance of the said copartnership &c. engage in any speculation profession trade or business whatsoever save the business of the said copartnership and for the benefit thereof without the consent of the other of them.

20. That neither of the said copartners shall enter into any bond &c. [see *former Precedents*, *ante*, p. 682.]

21. That each of the said copartners shall punctually [*pay private debts* &c., *ante*, p. 683.]

22. That neither &c. [*shall release debts* &c.] And in case either of the said copartners shall at any time act contrary to

No.
CCCXXIV.

*Between
Surgeons, &c.*

Neither party
to become bail,
&c.

To be diligent.

Losses by wil-
ful default to be
made good.

Parties to ren-
der an account.

Not to employ
money without
consent;

not to enter
into any specu-
lation;

nor enter into
any bond.

Parties to make
good debts re-
leased without
consent.

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*Between
Surgeons, &c.*

this present stipulation he shall thereupon out of his separate estate pay or make good to the said copartnership so much of the said debt or debts sum or sums of money as shall be so released that it shall not be afterwards received.

23. That the said copartners shall &c. [*state yearly accounts and make equal partition &c. see General Precedent, ante, p 684.*]

Dissolution of
partnership
after notice
given.

24. That in case either of the said parties shall at any time during &c. be absent from the said business for the space of _____ weeks without the consent of the other of them or shall become bankrupt or insolvent or shall become bail for any other person or shall draw any promissory note or check or indorse any bill without such authority as aforesaid or shall refuse or neglect for the space of _____ weeks after being thereunto requested to join in adjusting or settling any such annual account as hereinbefore mentioned or shall assign or incumber or apply to his separate use any of the copartnership stock or effects or shall suffer the same to be seized attached or taken in execution for or on account of his private and separate debts and engagements then and in any of the said cases it shall be lawful for the other of the said parties by giving notice in writing to that effect to the partner so offending or leaving it at his usual place of abode to dissolve the said copartnership and such copartnership shall cease and determine from the time when such notice shall be so given or left And that in case of the dissolution of the said copartnership through the default of the said A. B. for any of the causes above mentioned or in case of the death of the said C. D. at any time before the expiration of the said term the said A. B. shall within _____ months after such dissolution or decease (repay unto the said C. D. or his executors or administrators the sum of £ _____ so advanced by the said C. D.) and shall deliver unto the said C. D. or his executors or administrators a full true and just account of all debts monies and effects due and belonging to the said copartnership and after deducting such debts as are due and owing by them on the partnership account shall pay or cause to be paid unto the said C. D. his executors or administrators all and every such sum or sums of money as shall then be in hand at the time of such dissolution or decease and assign unto the said C. D. or his executors and administrators such part of the outstanding debts as shall appear by the said account to be the share of the said C. D. And that at the expiration or other sooner determination of the said term the said C. D. shall within the space of _____ calendar months after such determination

Provision in
case of A. B.'s
default, or
C. D.'s death.

At the expi-
ration of the
term, debts to
be assigned to
C. D.

join with the said A. B. or in case of his death with his executors or administrators in making out a full &c. account of the debts &c. of the said copartnership and on having the same debts &c. monies and effects of the said copartnership conveyed and assigned to him and on the said A. B. entering into a covenant not to carry on the said profession or business of &c. within miles of aforesaid he the said C. D. shall and will well and truly pay or cause to be paid unto the said A. B. &c. such part of the said debts as shall appear by the said account to be the share of the said A. B. in the net profits and gains of the said copartnership during the preceding year And in case &c. [*Clause of Arbitration, see General Precedent, ante, p. 686.*]

No.
CCCXXIV.
*Between
Surgeons, &c.*

—◆—

No. CCCXXV.

*A Continuance of Articles of Copartnership for a further Term
(by Indorsement).*

No. CCCXXV.
*Continuance of
Partnership.*

Obs. As to the consequence of not renewing articles of copartnership at the expiration of the term, see Pref. sect. 13, p. 678.

To all to whom these Presents shall come the within named (*partners*) send greeting *Whereas* the said parties have agreed to renew and continue the within mentioned copartnership which will expire and end on the day of for a further term of years to commence and be computed from the said &c. *Now know ye* That the said parties do hereby for themselves severally and respectively and for their respective heirs executors administrators and assigns mutually covenant and agree with and to each other and the executors administrators and assigns of each other That they the said parties shall and will remain continue and be copartners and joint traders or dealers in the trade or business of as within mentioned for the further term of years to commence And that the same shall be carried on by them with the same or like capital stock and in the same or like shares and proportions as to profit and loss and under and subject to the same or the like stipulations conditions provisoes limitations restrictions covenants and agreements as are respectively expressed and declared in the within written indenture so far as the same are now applicable *In witness &c.*

No.
CCCXXVI.

*Admission of
New Partner.*

No. CCCXXVI.

*Admission of a New Partner by annexing the same to the
Copartnership Deed.*

Testatum.

Consideration.

Admission of
G. H.

Shares of the
parties.

Parties mu-
tually agree to
be partners for
a term of years.

Subject to the
same terms, &c.
as before.

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part E. F. of &c. of the third part and G. H. of &c. of the fourth part Whereas [recite carrying on of the trade of by the old partners] Whereas in consideration of the sum of £ advanced and brought in and added to the said copartnership estate and effects by the said G. H. it hath been agreed by and between the parties hereto that the said G. H. shall be admitted a partner in the said trade or business as hereinbefore mentioned Now this Indenture witnesseth that in consideration of the sum of £ so advanced and brought in by the said G. H. as aforesaid to the account of the said copartnership they the said A. B. &c. do hereby severally covenant &c. with and to the said G. H. his &c. that the said G. H. shall be admitted a partner in the said trade or business now carried on by them as aforesaid from the day of the date of these presents and that in future it shall and may be lawful to and for the said A. B. and C. D. to take no more than two eighth parts or shares each of the profits of the said concern and that two other eighth parts or shares shall remain payable to the said E. F. according to the purport of the annexed articles and the remaining two eighth parts or shares thereof shall go and be paid to the said G. H. or his assigns for so long as the said copartnership between the said parties shall continue And this Indenture further witnesseth That in consideration of the special trust good opinion and confidence which the said A. B. &c. respectively repose in each other they the said A. B. &c. do hereby mutually covenant &c. That they the said parties shall and will from &c. commence and continue to be copartners and joint traders in in profit and loss thereby for and during &c. in case they shall so long live determinable nevertheless as in the hereunto annexed articles of agreement is mentioned and under and subject to such and the like terms conditions provisoes limitations restrictions and agreements as in the said articles of copartnership annexed are expressed and declared of and concerning the said copartnership capital stock and trade and other the matters and things therein comprised as fully and effectually to all intents and purposes as if the same terms agreements matters

and things were particularly mentioned expressed and repeated in and by these presents inserting the name of the said G. H. therein And it is hereby declared and agreed by and between the said parties to these presents that subject to the conditions and agreements contained in the said articles of copartnership the said copartnership estate and effects shall be and remain and belong to the said A. B. C. D. E. F. and G. H. their respective executors administrators and assigns *In witness &c.*

No.
CCCXXVI.
*Admission of
New Partner.*

No. CCCXXVII.

Assignment of a Moiety in a Copartnership and Admission of the New Partner (by Indorsement).

No.
CCCXXVII.
*Assignment of
Copartnership.*

This Indenture made &c. Between A. of &c. of the first part B. of &c. of the second part and C. of &c. of the third part Whereas the said A. and B. have for some time carried on the business of in copartnership together under and by virtue of the within written indenture And whereas the said A. with the privity and consent (a) of the said B. testified by his being a party to and executing these presents hath contracted with the said C. for the absolute sale to him of the one moiety or equal half part of him the said A. of and in the goodwill property and effects (except the credits thereof) of the said joint trade at or for the price or sum of £ And it hath been agreed that such moiety shall be assigned in manner herein-after mentioned Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the sum of £ by the said C. to the said A. paid the receipt whereof and that the same is in full satisfaction for the moiety or half part or share of him the said A. of and in the monies stock and effects belonging to the said A. and B. the said A. doth hereby acknowledge and of and from the same doth acquit release and for ever discharge the said C. his executors administrators and assigns he the said A. Doth hereby assign and transfer unto the said C. his executors administrators and assigns All that the moiety or equal half part of him the said A. of and in the goodwill of the said copartnership business and the gains and profits

Recital of copartnership.

Contract for sale of moiety.

Testatum.

(a) As to the necessity of this consent, see Gen. Pref. sect. 7, *ante*, p. 675.

No. CCCXXVII. <u>Assignment of Copartnership.</u>	henceforth to arise therefrom and of and in the goods stock in trade furniture account books and all other property and effects of the said copartnership and all the estate right title interest claim and demand both at law or in equity of him the said A. of in to or out of the said goodwill goods stock property effects and premises hereby assigned <i>To have and to hold</i> the said goodwill goods stocks and all and singular the premises hereby assigned or intended so to be unto the said C. his executors administrators and assigns in as ample and beneficial a manner as he the said A. might have had and enjoyed the same if these presents had not been made <i>And this Indenture further witnesseth</i> That in consideration of the premises he the said B. doth hereby admit the said C. into the said copartnership as an acting partner therein in respect of the one moiety of him the said A. in the said copartnership as aforesaid <i>And this Indenture further witnesseth</i> That in consideration of the premises each of them the said B. and C. for himself his heirs executors and administrators doth hereby covenant with the other of them his executors and administrators that they the said B. and C. shall and will henceforth become and be partners in the business of for and during all the residue now unexpired of the said term of years in the within written indenture mentioned and subject to the provisions and stipulations contained in the said indenture and shall and will at all times hereafter faithfully perform and keep all and every the covenants provisions agreements and stipulations contained in the said indenture so far as the same are now subsisting and capable of taking effect And that the several rights shares and interests of the said parties hereto of the second and third parts of and in the said copartnership property profits and effects shall be held and enjoyed by the same parties respectively under and by virtue of the within written indenture and of these presents or either of them and shall be subject and liable to the provisions of the said indenture so far as the same are now capable of taking effect as fully and effectually to all intents and purposes as if such provisions had been incorporated with and inserted in these presents and the name of the said C. been inserted in the within written indenture instead of the name of the said A. <i>In witness &c.</i>
Habendum.	
Admission of C.	
Covenants between B. and C.	

DISSOLUTION OF COPARTNERSHIP.

- | | | |
|--|--|---------------------------------|
| 1. <i>Deed when necessary.</i> | \| | 3. <i>Contents of the Deed.</i> |
| 2. <i>Agreement for a Dissolution.</i> | | |

SECT. 1. Where a partnership is constituted by deed, it must regularly be dissolved by an instrument of as high a nature: if, however, it is commenced by articles unsealed, it may be dissolved by parol. But a notice in the Gazette of a dissolution is evidence against the party signing it, that the partnership has been legitimately dissolved.

Deed when
necessary.

2. An agreement for a dissolution is not a dissolution, and will not have the effect of a dissolution.

Agreement for
a dissolution.

3. A deed of dissolution usually contains a declaration that the partnership is dissolved; an assignment of the retiring partner's share of the stock, credits, &c. to the remaining partner, in consideration of the repayment of the retiring partner's capital; a covenant of indemnity to the retiring partner against the debts of the old firm; and a mutual release on the partnership account; but deeds of this kind are subject to variations, according to the nature of the transactions. See Coll. on Partn. Bk. I. Ch. II., Bk. II. Ch. II. s. 2.

Contents of the
deed.

No. CCCXXVIII.

No.
CCCXXVIII.
Dissolution.

Deed of Dissolution between a retiring and Two continuing Partners (General Precedent).

This Indenture made &c. Between A. of &c. of the first part B. of &c. of the second part and C. of &c. of the third part Whereas [recite copartnership, see last Precedent] (a) And Recitals.
whereas the said A. on the day of now last past Retirement
with the consent of the said B. and C. hath retired from the said of A.
copartnership and it was thereupon agreed that the said A. should

(a) Or, if there be only two partners, say, "*And whereas upon the treaty for the dissolution it was agreed that the said B. who intends to carry on the said business alone should have for his own use all the share of him the said A. of and in the stock in trade credits and effects of the said copartnership upon his taking upon himself the debts and obligations of the said copartnership and paying to the said A. the sum of £ by two instalments of £ on the day of and £ on the day of the payment thereof to be secured by the joint and several bond of the said B. and (surety) as his surety And whereas in pursuance of the said agreement the said B. and said (surety) have by their bond &c.*" (see above.)

No.
CCCXXVIII.
Dissolution.

receive and take in satisfaction of his share and interest in the said business and in the stock monies merchandizes debts and effects of or belonging to the same the sum of £ with interest for the same after the rate of £ per cent. per annum to be computed from the day of last past by the instalments at the times and in the manner hereinafter mentioned (that is to say) [*state times &c.*] And that the payment of the several sums should be secured by the joint and several bond of the said B. and C. in a sufficient penalty And that the said A. should give the release and assignment and power of attorney hereinafter contained *And whereas* the said B. and C. have by their certain bond or obligation in writing bearing even date herewith become bound to the said A. in the penal sum of £ subject to a condition thereunder written for making void the same on payment to the said A. his executors administrators or assigns of the said several sums of £ £ and £ with interest for the same respectively at such times and in such manner as hereinbefore and therein expressed *Now this Indenture witnesseth* That in pursuance of the said agreement they the said A. B. and C. with the mutual assent of the other of them do and each of them doth by these presents determine and dissolve the said copartnership so far as regards the said A. and do and each of them doth declare that the same shall be considered to have ceased from the day of last past And that notice thereof shall immediately be signed by all the parties hereto and inserted in the London Gazette *And this Indenture further witnesseth* That in consideration of the several sums secured to be paid to the said A. as hereinbefore mentioned he the said A. *Doth* by these presents assign unto the said B. and C. *All that* one undivided part or share of him the said A. of and in all and singular the vessels &c. And of and in all and singular the leasehold messuages and tenements And of and in all and singular the debts and sums of money due and owing to the said copartnership and all other the estate effects profits and gains whatsoever of them the said A. B. and C. as copartners as aforesaid And all the estate &c. of him the said A. of in to or out of the said undivided part or share and premises hereby assigned or intended so to be *To have and to hold* the said one undivided part or share and all and singular other the premises hereby assigned or intended so to be unto the said B. and C. their executors and administrators to and for their own use and benefit *And* for the better enabling the said B. and C. their executors administrators

Testatum.

Dissolution.

Further testatum.

Power of attorney.

and assigns to recover and receive the said debts sums of money and premises hereby assigned or intended so to be he the said A. *Doth* hereby make ordain constitute and appoint the said B. and C. jointly and severally his true and lawful attornies irrevocably in his or their name or names as they shall think necessary or expedient but for the exclusive benefit and at the costs and risk of the said B. and C. to ask demand sue for recover and receive by all lawful and equitable ways and means whatsoever of and from all and every person and persons whom it doth concern or who ought to deliver or pay the same respectively the stock in trade monies debts merchandizes and effects belonging due or owing to the said copartnership and on the delivery and payment thereof respectively to give and execute receipts acquittances releases and other discharges for the same respectively and on non-delivery and non-payment thereof respectively as they shall think proper to commence and prosecute such actions suits or other proceedings at law or in equity as are necessary for recovering or compelling the delivery and payment thereof respectively And also to adjust settle compound and compromise all accounts reckonings transactions and things whatsoever relating to the said copartnership or the business or affairs thereof and generally to do and perform any other act deed matter or thing whatsoever relating to the premises as fully and effectually to all intents and purposes whatsoever as the said A. might or could do in case these presents had not been made *And* whatsoever the said B. and C. shall lawfully do or cause to be done in the premises he the said A. doth hereby covenant and promise to allow ratify and confirm *And* the said A. doth also hereby for himself his heirs executors and administrators covenant with the said B. and C. their executors administrators and assigns in manner following (that is to say) That he the said A. hath not at any time heretofore made done committed or executed or knowingly or willingly permitted or suffered any act deed matter or thing whatsoever whereby or by reason or means whereof the said part or share of him the said A. of and in the premises hereby assigned or intended so to be is can shall or may be in anywise impeached charged affected or incumbered in any manner howsoever *And* that he the said A. or his executors or administrators shall not nor will at any time or times hereafter by himself or themselves or any agent or agents respectively receive or take into his their or any of their possession the same monies debts and effects or any of them or any part thereof nor revoke or

No.
CCCCXXVIII.
Dissolution.

Covenants from
retiring partner.

Done no act to
incumber.

Will not receive debts, &c.

No.
CCCXXVIII.
Dissolution.

Further assur-
ance.

Not to carry on
the same trade.

Covenants
from continu-
ing partners.

To pay sums
secured.

To satisfy
debts, &c.

make void the power or authority hereinbefore given nor release compound acquit or discharge any of the debts or demands due to the said copartnership or disavow or become nonsuit in any actions or suits that shall be brought sued or commenced for or on account of the same without the consent of the said B. and C. for that purpose in writing first had and obtained nor do any other act matter or thing whatsoever by means whereof the said B. and C. or either of them shall or may be hindered and obstructed from receiving recovering and getting in all or any of the said stock in trade credits effects and premises whereof the interest or share of him the said A. is hereby assigned or intended so to be *And* that he the said A. his executors or administrators shall and will at all times hereafter at the request costs and charges of the said B. and C. make do acknowledge and execute or cause to be made done acknowledged and executed all such further or other acts deeds matters or things for more effectually vesting in the said B. and C. or their executors administrators or assigns the premises hereby assigned or intended so to be as the said B. and C. or either of them their or either of their executors administrators or counsel in the law shall reasonably advise and require *And* moreover that he the said A. shall not nor will at any time or times hereafter within the space of years to be computed from the date of these presents either for or on account of himself or any other person or persons whomsoever either directly or indirectly serve or solicit to serve either directly or indirectly any person or persons whomsoever who now is or are a customer or customers of the said parties hereto as copartners aforesaid with any articles or commodities whatsoever which they the said parties now do or have been hitherto used or accustomed to vend or deal in nor will set up carry on or exercise by himself or with any other person or persons the trade of or any branch thereof within the distance of miles from aforesaid *And* each of them the said B. and C. doth hereby for himself his heirs executors and administrators covenant with the said A. his executors administrators and assigns that they the said B. and C. or one of them their or one of their heirs executors or administrators will pay the several sums of £ and £ for which the said bond was so given as aforesaid at the times and in manner thereby appointed for the payment of the same *And* shall and will within the space of calendar months now next ensuing pay and satisfy or cause to be paid and satisfied all and every the debt and debts and sums of

money bill and bills of exchange dues claims and lawful demands whatsoever which now is or are or which shall or may at any time hereafter be or become due or payable by or from the said A. B. and C. or any or either of them for or in respect of the said copartnership or the stock or effects thereof *And* shall and will from time to time and at all times hereafter well and sufficiently save defend and keep harmless and indemnified the said A. his heirs executors and administrators and his and their lands and tenements goods and chattels of and from the said debts contracts and engagements and of and from all and all manner of actions suits and proceedings which shall or may be had or prosecuted against him the said A. his executors or administrators either solely or jointly with the said B. and C. or either of them in respect of the said copartnership *And* also of and from all costs charges damages and expenses which he or they shall sustain or be put unto by reason or on account of the said copartnership or anything relating thereto or on account of the assignment hereinbefore made *And* that they the said B. and C. or one of them shall and will at the reasonable request and at the costs and charges of the said A. his executors administrators or assigns produce or show forth unto him or them or any other person or persons for him or them lawfully authorized on that behalf or permit and suffer him or them at the counting-house of the said B. and C. to take copies or abstracts of all and every or any receipts acquittances discharges documents and evidences of any payment or payments of for or on account of any debt or sum of money now due or growing or becoming due from the said copartnership or from him the said A. in respect thereof for the purpose of manifesting or authenticating the payment of the same *And* each of them the said A. on the one part and the said B. and C. on the other part subject and without prejudice to the covenants hereinbefore contained do hereby acquit release and discharge the others and other of them of and from all and all manner of actions and causes of action suits accounts sums of money claims and demands whatsoever either at law or in equity which any or either of them the said A. B. or C. their executors or administrators now have or hath or may have against the others or other of them their or his heirs executors or administrators for or by reason or on account of the said copartnership or of any of the covenants and agreements in the said recited indenture mentioned and contained *In witness &c.*

No.
CCCCXXVIII.
Dissolution. -

To indemnify
retiring partner.

To produce
receipts.

Mutual re-
leases.

No.
CCCXXIX.

Dissolution.

No. CCCXXIX.

Deed of Dissolution between a retiring and a continuing Partner. (Short Form.)

Recitals.

Agreement for
a dissolution.

Account
settled.

Valuation.

Testatum.

Assignment.

This Indenture made &c. Between A. of &c. of the one part and B. of &c. of the other part Whereas [recite copartnership] And whereas the said A. and B. have mutually consented and agreed to dissolve the said copartnership on the day of the date hereof and that the said B. shall quit and give up the said trade to the said A. and also the joint stock upon the terms and conditions hereinafter mentioned expressed and declared And whereas all accounts relative to the receipts and disbursements of the said joint trade and of all sums of money advanced and paid by the said parties hereto have been settled and adjusted up to the day of the date hereof and upon such account there appears to be due to the said B. the sum of £ And whereas the said joint stock in trade has been valued and appraised at the sum of £ And there also appears to be due and owing to the said copartnership estate from sundry persons the sum of £ And whereas the said A. hath agreed to pay to the said B. the sum of £ so due and owing to him as aforesaid and also the sum of £ being his moiety or one equal half part of the joint stock in trade and credits upon having the whole of the said copartnership estate assigned to him in manner hereinafter mentioned Now this Indenture witnesseth That in pursuance of the said agreement each of them the said A. and B. Doth for himself his heirs executors and administrators hereby covenant and agree with the other of them his executors administrators and assigns that the said copartnership trade and all dealings and transactions relative thereto shall from the day of the date hereof cease and determine and that the said indenture of copartnership and every article clause and agreement therein contained as to the residue of the said term shall henceforth cease and be absolutely void and that the said trade and business shall be exercised and carried on by the said A. in his own name at his own risk and for his sole benefit and that the name of the said B. shall not from henceforth be made use of in the said trade and that he shall not be entitled to any subsequent profits nor liable to any losses that may arise thereby And this Indenture further witnesseth That in consideration of

the sum of £ and £ by the said A. to the said B. paid the receipt whereof the said B. doth hereby acknowledge he the said B. *Doth* by these presents assign unto the said A. his executors administrators and assigns *All that* one undivided moiety or half part or share of him the said B. of and in the said joint stock &c. and all the estate of him the said B. in the same premises *To have hold* receive and take the same premises hereby assigned or intended so to be unto the said A. his executors administrators and assigns to and for his and their sole use and benefit with full power and authority in his name or otherwise to sue for demand and receive the said copartnership debts and effects and premises hereby assigned *And* the said B. for himself his heirs executors and administrators doth hereby covenant &c. with the said A. his executors administrators and assigns that he the said B. hath not heretofore received released discharged or otherwise disposed of and shall not and will not at any time hereafter receive release or charge or otherwise dispose of any of the said copartnership debts and effects nor make do or willingly or knowingly suffer to be made or done any act whereby the said copartnership debts shall can or may be impeached charged or incumbered in any manner howsoever or whereby or by reason or by means whereof the said A. his executors administrators or assigns shall or may be hindered delayed or obstructed in receiving or recovering the same *And* he the said A. for himself his heirs executors and administrators doth covenant with the said B. his executors administrators and assigns that he the said A. his heirs executors or administrators shall and will at all times hereafter well and sufficiently defend keep harmless and indemnify the said B. his heirs executors administrators and assigns of and from all the said debts and sums of money (if any are still due and owing) and of and from all actions suits and demands whatsoever for or in respect of the same *And* each of them the said A. and B. do hereby acquit and release the other of them of and from &c. [see *last Precedent*] *In witness &c.*

No.
CCCXXIX.
Dissolution.

Covenant from
B.

Covenant from
A.

Mutual re-
leases.

No.
CCCXXX.

Dissolution.

No. CCCXXX.

Deed of Dissolution between Three Partners, at the Expiration of a Copartnership Term, where the whole is assigned to One continuing Partner.

Recital of dissolution by effluxion of time.

Articles of copartnership.

Valuation.

Bills.

This Indenture made &c. Between A. of &c. of the first part B. of &c. of the second part and C. of &c. of the third part Whereas under and by virtue of certain articles of copartnership bearing date the day of and made between the said A. B. and C. they the said parties have carried on the trade of in copartnership until the day of the date hereof And whereas by the said articles of copartnership it was declared and agreed among other things that the said C. should be at liberty to take the parts and shares of the said A. and B. of and in the dwelling house and premises where the joint trade might then be carried on And also the stock in trade debts and effects of the said copartnership at such sum as the same shall be valued at which said sum it was agreed should be paid by instalments in manner following (that is to say) one third thereof &c. and the payment thereof should be secured by bills or notes of hand and a warrant of attorney to confess judgment against him the said C. but that no judgment should be entered up until default should be made in the payment of the said bills or any of them And whereas upon a general valuation and account made and taken of all and every the messuages and tenements stock in trade credits and effects of the said copartnership the same have been found to amount to £ And whereas in pursuance of the said agreement the said C. hath given to the said A. and B. three several promissory notes of hand for the several sums of £ £ and £ and hath also executed a deed poll or warrant of attorney bearing even date herewith and authorizing and two attorneys jointly and severally or any other attorney to confess judgment for the sum of £ in an action to be brought against him the said C. by the said A. and B. And whereas the said A. and B. have agreed to assign their respective parts and shares of and in the said messuages and tenements stock in trade debts and effects of the said copartnership in manner hereinafter mentioned Now this Indenture witnesseth That in consideration of the bills so given as aforesaid the receipt of which they the said A. and B. do hereby acknowledge and also in consideration of the said in part recited

warrant of attorney and of the covenants on the part of the said C. hereinafter contained they the said A. and B. *Do* and each of them *Doth* assign unto the said C. *All those* the undivided parts and shares (the whole being considered as divided into parts) of them the said A. and B. of and in the messuages and tenements situate and held under and by virtue of a certain indenture of lease bearing date &c. and made between &c. for all the residue to come and unexpired of a term of years subject nevertheless to the rent covenants and conditions therein contained And also of and in all the stock in trade goods chattels credits and effects of the said copartnership And all the estate right title and interest of the said A. and B. and each of them in to or out of the said parts or shares and premises *To have and to hold* the said undivided parts or shares and all and singular other the premises hereby assigned unto the said C. his executors administrators and assigns And for the better enabling the said C. his executors &c. to recover &c. they the said A. and B. *Have* made &c. and by &c. *Do* make &c. the said C. his executors &c. their true &c. [see *General Precedent*] And each of them the said A. and B. for himself his heirs executors and administrators doth hereby covenant with the said C. his executors administrators and assigns that they the said A. and B. or either of them have not received &c. debts effects &c. [see *General Precedent*] And that they or either of them shall not &c. [receive monies &c., ante, p. 753] And that they or one of them shall &c. make &c. acts &c. [for further assurance] And moreover that they or either of them shall not &c. [carry on the same trade &c., ante, p. 754] And the said C. for himself &c. doth &c. covenant &c. with &c. the said A. and B. that he the said C. his executors or administrators shall and will pay and discharge the said promissory notes as and when they shall become due and payable And also shall and will pay and satisfy the debts of the copartnership [see *General Precedent*] And also shall &c. [indemnify the said A. and B. against the debts &c., ante, p. 755] And each of them the said A. B. and C. do hereby &c. release each other &c. [see *General Precedent*, ante, p. 755] *In witness &c.*

No.
CCCXXX.
Dissolution.

Habendum.

Power of attorney.

Covenants from A. and B.

Covenants from C.

Mutual releases.



No.
CCCXXXI.
Dissolution.

No. CCCXXXI.

*Deed of Dissolution between Two Partners, where there are
mutual Assignments.*

Recitals.

Agreement for
dissolution.

Testatum.

Further tes-
tatum.

Further tes-
tatum.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas [recite co-partnership] And whereas the said A. B. and C. D. have on the terms and for the considerations hereinafter expressed agreed to dissolve the said copartnership and that the same as from the day of the date hereof shall cease and determine Now this Indenture witnesseth That in pursuance of the said agreement they the said A. B. and C. D. with the mutual consent of each other have determined and dissolved and by these presents do determine and dissolve the said copartnership and it is hereby agreed by and between the parties hereto that a notice thereof signed by the said copartners shall be inserted in the London Gazette And this Indenture further witnesseth That in further pursuance of the said agreement he the said C. D. Doth hereby assign unto the said A. B. his executors administrators and assigns All that the moiety or one equal part (the whole being considered as divided into two equal parts) of him the said C. D. of and in the stock goods merchandize and effects mentioned and specified in the schedule hereunder written or hereunto annexed and all the estate right title and interest of him the said C. D. of in and to the said moiety To have and to hold the said moiety and all and singular the premises hereby assigned unto the said A. B. his executors administrators and assigns to and for his and their own use and benefit And this Indenture further witnesseth That in consideration of the covenants and agreements hereinbefore contained on the part of the said C. D. he the said A. B. [similar assignment by A. B. to C. D.] And for the better enabling the said C. D. to recover &c. he the said A. B. hath made &c. [see power of attorney, General Precedent] [similar power of attorney by C. D.] And the said C. D. for himself &c. doth hereby covenant with the said A. B. that the draft or bill which he the said C. D. hath this day drawn upon Messrs. R. N. and I. P. in favour of him the said A. B. shall be duly honoured and paid as soon as the same shall become due and payable And further that he the said C. D. his executors and administrators shall and will within months from the date hereof pay satisfy and discharge

all and singular the debts and sums of money now due and owing from the said A. B. and C. D. as copartners as aforesaid to any person or persons whomsoever *And also* shall and will from time to time &c. [*Clause of Indemnity, &c.* see *General Precedent*] (a).

No.
CCCXXXI.
Dissolution.

No. CCCXXXII.

No.
CCCXXXII.
Dissolution.

Assignment of the Stock in Trade of a deceased Partner by the Administrator to the surviving Partner, and Dissolution of Partnership between the Widow and the surviving Partner.

This Indenture made &c. Between (*Widow*) of &c. widow and relict of A. B. late of &c. deceased of the first part (*Administrator*) of &c. administrator of the estate and effects of the said A. B. of the second part and (*Surviving Partner*) of &c. of the third part *Whereas* the said A. B. deceased and the said (*S. P.*) for many years previously to and up to the death of the said A. B. carried on business in copartnership together as *And* *whereas* the said A. B. departed this life on or about *in-*testate *And* thereupon letters of administration were granted by the Court of Probate Principal Registry unto (*A.*) she the said (*W.*) having duly renounced the administration thereof *And whereas* the stock in trade plant and fixtures used by the said parties for the purpose of carrying on the said joint trade were wholly provided by and the exclusive property of the said A. B. and soon after the decease of the said A. B. were duly valued and appraised *And* thereupon the said (*S. P.*) became the purchaser thereof at the price or sum of £ which said sum of £ he the said (*S. P.*) hath duly paid to the said (*A.*) as administrator of the said A. B. but no regular deed of assignment hath yet been made unto the said (*S. P.*) of the said stock plant or fixtures by him purchased *And whereas* since the death of the said A. B. the said (*W.*) hath carried on the said trade or business in copartnership with the said (*S. P.*) upon or with the said stock plant and fixtures so purchased by the said

Recital of
partnership.

Death of de-
ceased partner.

The stock in
trade, &c. pur-
chased by sur-
viving partner.

Surviving part-
ner and widow
in partnership.

(a) The above precedent will be sufficient when the partnership property is of such a nature that it can be at once divided and pass by delivery, but if it consist of leaseholds it will be necessary to vest it in a trustee upon trust to re-assign the respective moieties to the partners.

No.
CCCXXXII.
Dissolution.

No distribution
of profits be-
tween them.

Agreement to
dissolve part-
nership.

Widow to as-
sign her share.

Surviving part-
ner to secure
sum of £

Recital of bond.

To assign
stock.

Testatum.

Assignment of
stock.

(*S. P.*) And during the course of the said copartnership they have acquired some additional stock in trade and divers sums of monies due and owing unto them on the said copartnership account *And whereas* no distribution hath yet been made between the said (*W.*) and (*S. P.*) of the gains and profits of the said joint trade so carried on between them as aforesaid but the said (*S. P.*) hath at different times advanced unto the said (*W.*) several sums of money amounting in the whole to the sum of £ *And whereas* the said (*W.*) and (*S. P.*) have mutually agreed to dissolve the said copartnership and upon the treaty for the dissolution thereof it was agreed between them that in consideration of the said sums advanced to the said (*W.*) by the said (*S. P.*) as aforesaid and also in consideration of the further sum of £ to be secured to be paid to the said (*W.*) by the bond of the said (*S. P.*) she the said (*W.*) should assign release and make over unto him the said (*S. P.*) all her part and share right and interest as well of and in the said additional stock in trade as also of and in the several debts and sums of money mentioned in the schedule hereunder written now due and owing to them the said (*W.*) and (*S. P.*) for or in respect of the said joint trade And also that the said (*W.*) should enter into such covenants for the purpose of restraining her from carrying on the said trade as are hereinafter expressed *And whereas* in pursuance of the said agreement on the part of the said (*S. P.*) he the said (*S. P.*) by his bond &c. [*recite bond*] *And whereas* the said (*A.*) upon the application of the said (*S. P.*) hath consented and agreed so far as he lawfully may or can without rendering himself liable to or responsible for any of the covenants and agreements hereby entered into between the said (*W.*) and (*S. P.*) to concur in and be a party to these presents for the purpose of assigning and making over unto the said (*S. P.*) the said stock plant and fixtures purchased by the said (*S. P.*) as aforesaid *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*A.*) paid by the said (*S. P.*) the receipt of which is hereby acknowledged by the said (*A.*) and (*W.*) he the said (*A.*) *Doth* hereby assign and set over And in consideration of the sum of £ so paid by the said (*S. P.*) to the said (*W.*) and also in consideration of the sum of £ so secured to her by the said (*S. P.*) as aforesaid she the said (*W.*) *Doth* release remise and assign unto (*S. P.*) his executors administrators and assigns *All* and singular the said stock plant and fixtures and all the things belonging to being in or used for the said copart-

nership trade or concern mentioned and particularized in the schedule hereunder written And all the estate right title interest property and demand whatsoever both at law and in equity of them the said (A.) and (W.) and each of them into or out of all and every the said stock plant fixtures and things and every part thereof *To have hold* receive and take the said stock &c. hereby assigned or intended so to be unto the said (S. P.) his executors administrators and assigns to and for his and their own use and benefit and as and for his and their own proper goods and chattels henceforth absolutely for ever And the said (A.) doth hereby for himself his heirs executors and administrators covenant with the said (S. P.) his executors administrators and assigns that he the said (A.) hath not done or suffered any act or thing whereby he is prevented from assigning the said premises in manner aforesaid according to the true intent and meaning of these presents And this Indenture also witnesseth That in further pursuance of the said agreement and for the considerations aforesaid the said (W.) and (S. P.) Do and each of them Doth hereby determine vacate and dissolve the said copartnership and joint trade and do and each of them doth hereby declare and agree that the same shall henceforth from the day of the date of these presents cease determine and be utterly void to all intents and purposes as fully and effectually as if the same had never been entered into And this Indenture further witnesseth That in consideration of the premises she the said (W.) Doth assign transfer and set over unto the said (S. P.) All and singular the part and share of her the said (W.) of and in and to all and every the ready money goods stock and effects whatsoever belonging to the joint trade and copartnership and also of and in all debts and sums of money now or at the dissolution of the said copartnership due and owing to the same copartnership or joint trade And all the estate right title and interest of her the said (W.) of in and to all and every the said debts and sums of money And all and singular the bonds bills notes and specialties and books for and concerning the said debts and the said copartnership between them *To have hold* receive take and enjoy all and every the ready money goods stock effects debts and other the premises hereby assigned unto the said (S. P.) his executors administrators and assigns to and for his and their own use and benefit and as and for his and their own proper goods and chattels from henceforth absolutely for ever And for the purpose of carrying the said agreement into effect she the said (W.) Hath made the said (S. P.) &c. her

No.
CCCXXXII.
Dissolution.

Habendum.

Dissolution of
partnership.

Further tes-
tatum.

Assignment of
debts, &c. by
widow.

Habendum.

Power of
attorney.

No.
CCCXXXII.
Dissolution.

Covenant from
widow not to
revoke power.

For further
assurance.

Surviving part-
ner to pay
bond;

to discharge
partnership
debts;

and to save
widow harm-
less.

attorney &c. for the sole use and benefit and at the sole risk cost and charges of him the said (*S. P.*) to ask &c. [see *General Precedent*] And she the said (*W.*) for herself her heirs executors and administrators doth hereby covenant with the said (*S. P.*) his executors administrators and assigns that she the said (*W.*) her executors or administrators shall not nor will revoke or annul the power of attorney hereby given or receive release compound or discharge or in any manner directly or indirectly interfere with the collecting compounding or receiving of the said debts and sums of money hereby assigned nor disavow or become non-suit or otherwise impede delay or interfere in any action suit or other proceeding whatsoever to be commenced sued or prosecuted for recovery thereof or in relation thereto And moreover shall and will from time to time and at all times hereafter at the reasonable request and at the costs charges and expenses of the said (*S. P.*) join or concur in making doing and executing all and every such further and other lawful and reasonable acts deeds and agreements as shall be requisite and proper for enabling the said (*S. P.*) to recover receive and get in the said copartnership estate debts and effects And the said (*S. P.*) for himself his heirs executors and administrators doth hereby covenant with the said (*W.*) her executors administrators and assigns that he the said (*S. P.*) his heirs executors or administrators will pay the said sum of £ so secured by the said bond at the time appointed for payment of the same as aforesaid And also shall and will on or before the day of well and truly pay and discharge all and every the debts and sums of money due and owing from them the said (*S. P.*) and (*W.*) on the partnership account since the death of the said A. B. And also shall and will from time to time and at all times hereafter save defend and keep harmless and indemnified the said (*W.*) her executors administrators and assigns and every of them and her and their lands tenements goods and chattels of from and against all and all manner of actions suits and proceedings at law and in equity which shall or may at any time hereafter be brought commenced or prosecuted against the said (*W.*) her heirs executors or administrators or any of them and of from and against all losses costs charges damages and expenses which she or they shall or may suffer sustain expend or be put unto on account of any debt or sums of money due or owing from them the said (*W.*) and (*S. P.*) or either of them in respect of the said joint trade or anything relating thereto And in consideration of the premises she the

said (*W.*) doth hereby for herself her heirs executors and administrators covenant with the said (*S. P.*) his executors administrators and assigns that she the said (*W.*) shall not nor will at any time or times hereafter alone or jointly or for any person or persons whomsoever either directly or indirectly or upon any account or pretence whatsoever set up exercise or carry on the said trade or business of within the distance of from or any part or branch of such trade nor make or encourage any opposition to the said trade or business hereafter to be carried on by the said (*S. P.*) his executors administrators or assigns nor do any act matter or thing to the prejudice thereof and shall not nor will divulge or make known any of the secrets debts or accounts of or relating to the said copartnership or trade
In witness &c.

No.
 CCCXXXII.
Dissolution.

Covenant from
 widow not to
 carry on trade,
 &c.

No. CCCXXXIII.

*Assignment, Release and Indemnity, between surviving Partners
 and the Executors of a deceased Partner.*

No.
 CCCXXXIII.
Dissolution.

Obs. As the estate of a deceased partner is liable to the partnership debts contracted during the partnership, the same provision of indemnity to the executors is necessary as in other cases, *Deraynes v. Noble*, 1 Mer. 564.

This Indenture made &c. Between (executors) of &c. executors of the last will and testament of A. B. late of &c. deceased of the one part and (surviving partners) of &c. of the other part Whereas the said A. B. deceased at the time of his decease and for some time previous thereto was a partner with the said (S. P.) in the banking business which said copartnership was determined by his decease so far as regards his interest in the said copartnership And whereas the said copartnership accounts between the said A. B. and the said (S. P.) were unsettled for some years previous to his decease and with a view to put an end to all questions that may at any time hereafter arise the said (E.) have proposed upon payment to them of the sum of £ to relinquish and give up all further claim or demand upon the said copartnership in respect of the interest of the said A. B. therein and to release and assign to them the said (S. P.) all their share and interest as executors of the said A. B. of and in all the outstanding debts

No.
CCCXXXIII.
Dissolution. —

Testatum.

Habendum.

Covenants from
executors.

due and owing to the said copartnership they the said (*S. P.*) agreeing not only to make such payment but also to execute to the said (*E.*) a release of all demands upon the estate of him the said A. B. deceased and to indemnify the same and them the said (*E.*) against all engagements and responsibility which the estate of the said A. B. deceased might otherwise be liable to on account of the said copartnership to which said proposal the said several parties have consented respectively *Now this Indenture witnesseth* That in consideration of the sum of £ by the said (*S. P.*) paid to the said (*E.*) at or before the execution of these presents the receipt of which said sum of £ they the said (*E.*) do hereby admit and acknowledge and also in consideration of the covenants on the part of them the said (*S. P.*) hereinafter contained They the said (*E.*) *Do* and each of them *Doth* by these presents assign unto the said (*S. P.*) their executors administrators and assigns *All* the right share and interest whatsoever of him the said A. B. at the time of his death and of them the said (*E.*) as his executors as aforesaid of and in all and singular the credits and effects of the said late copartnership and of and in all sums of money and securities whatsoever outstanding or due to the said copartners either at the time of the decease of the said A. B. or at the day of the date of these presents *To have and to hold* all and singular the said hereby assigned premises and every part and parcel thereof and all profit and advantage to arise therefrom unto the said (*S. P.*) their executors administrators and assigns to and for their sole use and benefit for ever And each of them the said (*E.*) doth hereby for himself his heirs executors and administrators covenant with the said (*S. P.*) their executors administrators and assigns That all monies debts and effects hereby assigned shall be collected and got in by the said (*S. P.*) their executors administrators or assigns at the sole risk and costs and for the sole benefit of them the said (*S. P.*) their executors administrators and assigns and for that purpose that the said (*S. P.*) their executors administrators and assigns may commence and adopt such actions and proceedings as to them shall seem meet and expedient and that the said (*E.*) shall and will from time to time permit and suffer them the said (*S. P.*) their executors administrators and assigns to use the name or names of the said A. B. deceased or of them the said (*E.*) or either of them in all such actions or suits as shall be necessary for collecting or getting in the said monies debts and effects And

each of them the said (*E.*) doth hereby for himself his heirs executors and administrators covenant with the said (*S. P.*) their executors administrators and assigns that they the said (*E.*) have not made done or suffered any act whereby the said debts and premises hereby assigned or any part thereof are is shall can or may be in anywise prejudiced released discharged or incumbered in any manner howsoever And shall not nor will at any time hereafter do or suffer any act whereby to release or discharge all or any of the said debts or the power or authority hereby given for recovering the same or any action or suit to be thereon brought for the recovery thereof without the consent of the said (*S. P.*) And also that the said (*E.*) and all other persons claiming under them or under the said A. B. deceased shall and will make do and execute or cause to be made done and executed all such acts deeds and things as shall be necessary for assigning the said debts and premises hereinbefore assigned in manner aforesaid according to the true intent and meaning of these presents (*a*) And they the said (*E.*) do hereby remise release discharge and quit claim the said (*S. P.*) and every of them their executors or administrators and their lands estates and effects of from and against all and all manner of actions [see RELEASE, *General Precedent*] And this Indenture further witnesseth That for and in consideration of the premises they the said (*S. P.*) Do and each of them Doth remise release acquit and for ever discharge the said (*E.*) as executors as aforesaid and their executors and administrators of and from all claims and demands which they the said (*S. P.*) or any of them now have ever had or can or may have claim or demand against them the said (*E.*) as executors as aforesaid by reason or on account of the said A. B. having been a partner with them as aforesaid (*b*) And they the said (*S. P.*) do hereby for

No.
CCCXXXIII.
Dissolution.

Further testamentum.

Release from surviving partners.

Indemnity.

(*a*) In some cases it may be proper to add, "And further that in case within the space of _____ months now next ensuing it shall be proved and made plainly appear that the said A. B. contracted any debt or debts on the late copartnership account other than such as are comprised in the account signed by them the said (*E.*) and (*S. P.*) and that such debts are now due and justly owing from the said A. B. to such person or persons on account of the said joint trade and that the same shall be charged therewith Then and in such case they the said (*E.*) or one of them shall and will out of the estate of the said A. B. pay and satisfy all and every such debt or debts (if any) so remaining due as aforesaid."

(*b*) And add, if necessary, "except as to all such debts or sums of money as are not comprised in the said rest book and which shall appear to have

No.
CCCXXXIII.
Dissolution.

themselves their heirs executors and administrators and each of them doth hereby for himself his heirs executors and administrators covenant with the said (*E.*) their executors and administrators that they the said (*S. P.*) their heirs executors and administrators shall and will from time to time and at all times hereafter save harmless and keep indemnified the said (*E.*) their executors and administrators and their estate and effects goods and chattels and the estate and effects of the said A. B. of and from all and singular the debts and engagements of the said late copartnership wherein the said A. B. was concerned as aforesaid and of and from all costs charges suits actions damages and demands whatsoever which can shall or may be incurred sustained prosecuted or recovered against them the said (*E.*) their executors or administrators or to which the estate and effects of the said A. B. can shall or may be liable in any way whatsoever by reason of his having been a partner in the said copartnership concern *In witness &c.*



No.
CCCXXXIV.
Dissolution.

No. CCCXXXIV.

Dissolution of Copartnership where Receivers are appointed to call in Debts and wind up Accounts.

Testatum.

Dissolution.

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part and (receivers) of &c. of the third part Whereas [recite copartnership] And whereas it hath been mutually agreed between the said parties that the said copartnership shall cease and be wholly dissolved on the day of the date of these presents subject nevertheless to such covenants and conditions as are hereinafter in that behalf respectively expressed and contained Now this Indenture witnesseth That in pursuance of the said agreement they the said A. B. and C. D. by and with the mutual consent and approbation of each other Do and each of them Doth determine put an end to and dissolve the said copartnership heretofore subsisting between them as merchants under the firm of &c. And do hereby agree and declare that the same shall henceforth wholly and absolutely cease And that notice thereof shall be immediately inserted in the London Ga-

been contracted by the said A. B. and to be still justly due and owing from the said copartnership."

zette And that every clause matter and thing relative to the said copartnership and joint trade in the said in part recited articles of copartnership contained shall be and be considered to be null and void to all intents and purposes whatsoever *And this Indenture further witnesseth* That in consideration of the said dissolution of the said copartnership as aforesaid and also for the purpose of taking a true and just account of all the said copartnership dealings at any time heretofore had between the said A. B. and C. D. And for dividing the clear gains and profits and remaining stock and effects equally and impartially between them it is hereby declared and agreed between them the said A. B. and C. D. and each of them doth hereby for himself his heirs executors and administrators and so far as concerns his and their own acts and deeds covenant promise and agree with and to the other of them his executors and administrators in manner following (that is to say) That each of them the said A. B. and C. D. shall and will immediately at the sealing and delivery of these presents make out and deliver to the other of them a statement in writing of all monies bills and bonds notes and securities for money which at the time of sealing and delivery of these presents are or shall be in his hands custody or power *And also* that each of them the said A. B. and C. D. shall and will make out and deliver to the other of them a statement in writing of all debts contracted and all engagements entered into for or on account or with or upon the credit of the copartnership without the privity or consent of the other of them and of all monies which since the day of last past have been received by him and appropriated for his own use *And further* that all the books of account and papers letters bills bonds notes and other securities and writings whatsoever concerning the business dealings transactions and affairs of the said A. B. and C. D. or either of them in respect of their said copartnership which now are in their or either of their custody or power shall at or immediately after the date and execution of these presents be safely and without fraud concealment or any reservation whatsoever brought to and lodged and deposited at or within the copartnership house in aforesaid where the said joint trade or business hath been heretofore carried on and shall from time to time until the final close of the said copartnership accounts and for the space of three calendar months afterwards unless the house and premises whereof the said counting house is a part shall be sooner sold and disposed of pursuant to the power con-

No.
CCCCXXIV.
Dissolution. —

Further testimony.

Each to make out a true account.

Deposit of bills, &c.

No.
 CCCXXXIV.
Dissolution.

tained in the said articles of copartnership And then within such distinct counting house or place as they the said A. B. and C. D. shall from time to time mutually agree upon and hire for that purpose being within one mile from the street aforesaid and not at the house or premises of any of the attornies or relations of either of the said partners or in case they cannot mutually agree in respect thereof then at such counting house as the said (*R.*) as receivers hereinafter appointed or the receivers for the time being shall in their own discretion think fit to take and rent for that purpose being within one mile of and not at the house of either of the said partners or their relatives *And also* that the said books of account and other books letters bills bonds notes and other writings concerning the business of the said joint trade shall from time to time and at all seasonable times until the said accounts shall be settled and finally closed and for the space of three calendar months afterwards be open to the inspection of them the said partners respectively and their respective executors and administrators and also of them the said (*R.*) And they or any or either of them shall from time to time and at all times have liberty to resort thereto to peruse examine and take copies and extracts of or from the same respectively without any hindrance or denial whatsoever And neither of them the said A. B. and C. D. nor the said (*R.*) shall at any time whensoever remove from such counting house as aforesaid any such books securities evidences or writings as aforesaid without the privity or consent of the other of them the said partners *And moreover* that true and correct copies or duplicates of all such books &c. shall be taken by a proper and able accountant mutually agreed upon and nominated and approved by them the said parties And that the costs charges and expenses of making out such copies shall be borne paid and satisfied by both parties in equal parts or otherwise paid and satisfied out of and from the general copartnership monies and funds *And further* that after the making out of such copies or duplicates a perfect and final audit in writing shall be made by the said accountant of and concerning the said joint trade and all monies debts goods wares merchandize profits gains and effects now due or belonging in anywise to the said copartnership trade And also of all debts sums of money charges losses and expenses which by reason of the said joint trade shall be by them the said partners or either of them due or owing to any person or which they the said partners or either of them shall have suffered or sustained by reason

Accountant to
 audit accounts.

or on account thereof *And also* of what parts and proportions of the said copartnership money and effects are now due and belonging to each of them the said partners And that the said audit when examined checked and corrected from the said books and other vouchers shall be finally signed and allowed by them the said partners at the foot of such account *And* it is hereby further agreed that after such account shall be so made out and allowed as aforesaid the heads of the same shall be drawn out on two balance sheets to be signed by each of the said partners who shall take one for his own use *And whereas* upon the treaty for the dissolution of the said copartnership it was agreed that the outstanding debts now due and owing to the said partners or either of them for or on account of the said copartnership shall be collected and received by (*R.*) hereby appointed receivers And that for that purpose the same debts should be assigned to the said (*R.*) with such powers to enable them to recover and get in the same as are hereinafter mentioned *Now this Indenture further witnesseth* That in pursuance of the said agreement They the said A. B. and C. D. *Do* and each of them *Doth* assign unto the said (*R.*) all and singular the debts and sums of money now due and owing by bills notes simple contract or otherwise to the said A. B. and C. D. for or in respect of their copartnership And the interest due or to grow due upon such of the debts as carry interest And all the right interest claim and demand of the said partners together with all powers remedies and means requisite or necessary for recovering receiving and giving effectual receipts and discharges for the same debts and sums respectively *To hold* receive and take the said debts sums of money and premises expressed to be hereby assigned unto and to the use of the said (*receivers*) their executors and administrators *In trust* nevertheless as soon as conveniently may be to collect receive and get in all and singular the same debts and sums of money and by with and out of the monies to be collected got in and received *In trust* to pay and satisfy and discharge all the debts and sums of money due and owing from or by the said partners in respect of the said copartnership as far as such debts respectively shall come to the knowledge of the said (*R.*) or the survivor of them his executors or administrators or such as they the said (*R.*) or &c. shall in his or their judgment consider to be bonâ fide due and owing And as to the ultimate surplus of the monies so to be collected and received subject to the payment of such costs charges damages and debts due and owing from

No.
CCCXXXIV.
Dissolution.

Further tes-
tatum.

Assignment to
receivers.

No.
 CCCXXXIV.
Dissolution.

Assignment,
 &c. to be void.

the said A. B. and C. D. as aforesaid *In trust* for the said A. B. and C. D. equally to be divided between them and their respective executors and administrators *And* it is hereby agreed &c. [*receipts of receivers to be valid discharges*] *And* they the said A. B. and C. D. *Do* and each of them *Doth* hereby constitute [*Power of Attorney, see General Precedent, DISSOLUTION*] *Provided always* and it is hereby agreed and declared that in case the whole of the debts now due and owing to the said A. B. and C. D. in respect of the said copartnership shall not be collected and received by the said (R.) within the space of calendar months to be computed from the date hereof *Then* the assignment hereby expressed to be made and the power hereby given shall as to such debts as remain uncollected cease and determine without prejudice to the intermediate acts done by the said (R.) *And* each of them the said A. B. and C. D. doth hereby for himself his heirs executors and administrators and so far as concerns his own acts and deeds covenant with the other of them his executors and administrators that they the said A. B. and C. D. shall not nor will at any time or times hereafter during the space of calendar months aforesaid by themselves or others directly or indirectly receive any of the said outstanding debts due or owing to the said copartnership but permit and direct the same to be received by the said (R.) or the survivors or survivor of them or the executors or administrators of such survivor pursuant to the authority and upon the trusts aforesaid *And* each of them the said A. B. and C. D. doth hereby for himself his heirs executors and administrators covenant with the other of them his executors and administrators in manner following (that is to say) That in case all the said debts hereby assigned shall not be collected and received by the said (R.) within the space of months as aforesaid the said A. B. and C. D. respectively or their respective executors or administrators shall and will within days then next after meet together and take an account of such of the same debts as shall then remain unpaid *And* shall allot to each other by mutual agreement between themselves a just fair and equal portion of each of the said debts in order that the same may be fairly and equally divided amongst and between them in equal parts *And further* that upon such division made each of them the said A. B. and C. D. shall and will at the request and expense of the other of them his executors or administrators in due form of law execute a proper assignment unto the other of them his

No.
CCCXXXIV.
Dissolution.

executors administrators and assigns of the apportioned share and shares part or parts of and in all such debts as aforesaid And shall and will join in and execute all such powers as shall be necessary to enable the party taking such assignment to receive or otherwise act with regard to the property as he shall think fit the party assigning being effectually indemnified by the party requiring the same from any expense or responsibility with regard to the property and effects to be thereby assigned *And further* that neither of them the said A. B. and C. D. their executors or administrators shall and will at any time or times hereafter remise release or discharge any of the debts or securities to be allotted to the other of them nor release any actions or suits which shall be sued or commenced for or on account of the same or any of them or any part thereof nor do or cause to be done nor willingly suffer any act deed matter or thing whatsoever whereby or by means whereof the other of them the said A. B. and C. D. his executors administrators or assigns shall or may be prevented from or hindered or retarded in the receiving or recovering the same or any of them without the special license or consent of such other of them his executors administrators or assigns in writing first had and obtained for that purpose. But on the contrary that each of them the said A. B. and C. D. his executors administrators and assigns shall and will give and afford every reasonable assistance in his power unto the other of them his executors administrators and assigns for the better enabling him to recover receive possess and enjoy his said allotted debts and shall and will from time to time permit his or their name and names to be made use of in all such actions and suits as aforesaid *Provided always* and it is hereby further agreed and declared by the parties hereto that it shall be lawful for the said (R.) to deduct and reimburse themselves and pay and allow to the others of them by and out of all or any of the monies which by virtue of these presents or any of the trusts and powers herein contained shall come to their hands all such costs charges and expenses which they or either of them shall or may pay bear sustain expend or be put unto in or about or relating to the execution of the said trusts and powers or otherwise by reason or means of these presents *And* that they the said (R.) their executors administrators and assigns shall not be answerable or accountable for any loss which may happen in or about the execution of these presents or the trusts thereof nor for any banker broker or other person with whom any of the said co-

Reimburse-
ment of re-
ceiver.

No.
CCCXXXIV.
Dissolution.

partnership property may be deposited or lodged for safe custody
Provided also [*Covenant to refer disputes to arbitration, see ante,*
p. 686, and n. (c)] *In witness &c.*



No.
CCCXXXV.
*Assignment of
Debts.*

No. CCCXXXV.

Assignment of Copartnership Debts.

Recital that
A. B. and C. D.
carried on busi-
ness in partner-
ship.

Apportionment
of debts.

Testatum.

Assignment of
debts to trus-
tees on behalf
of A. B.

Habendum.

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part E. F. of &c. and G. H. of &c. trustees nominated by and on behalf of the said A. B. for the purposes hereinafter mentioned of the third part Whereas the said A. B. and C. D. were lately copartners together as surgeons and apothecaries which copartnership hath some time since been dissolved And on the investigation and settlement of the copartnership accounts it hath been agreed that the debts due and owing from them as copartners should be paid and discharged by the said A. B. and of the debts due and owing to them those marked with the letter D. in the schedule hereunto annexed shall be paid or accounted for to the said C. D. for his own separate benefit and the residue of such debts so due and owing to them shall be assigned and transferred to the said E. F. and G. H. for the benefit of the said A. B. Now this Indenture witnesseth That in pursuance of the said agreement they the said A. B. and C. D. Do and each of them Doth assign transfer and set over unto the said E. F. and G. H. their executors administrators and assigns All and every the outstanding debts and sums of money due and owing to them the said A. B. and C. D. from any person or persons whomsoever for or on account of or in respect of their late copartnership (save and except such debts as have been agreed shall be paid or accounted for to the said C. D. on his separate account and a list whereof is now left with the said E. F. and G. H.) And all the estate right title and interest of the said A. B. and C. D. and each of them of and in the same premises Together with full power and authority to ask demand sue for recover and receive and give effectual receipts and discharges for the said debts and sums of money hereby assigned and every part thereof To have hold receive and take the said debts and sums of money and the premises hereby assigned or intended so to be unto the said E. F. and G. H. their executors administrators and assigns Upon trust

nevertheless and to the intent that they the said E. F. and G. H. or the survivor of them or the executors or administrators of such survivor their or his assigns shall and may with all convenient speed collect call in recover and receive and use their best endeavours to convert into money all and every such outstanding debts and sum and sums of money due and owing to the said A. B. and C. D. on their said late copartnership as aforesaid and to pay and dispose of all monies arising therefrom after deducting all expenses attending the recovery and receipt thereof and executing the trusts and powers hereby reposed in them In the first place in discharging all debts and sums of money due and owing by the said A. B. and C. D. jointly as copartners as aforesaid to any person or persons whomsoever and all interest costs and expenses (if any) attending the same and after payment and satisfaction thereof *Then upon trust* to pay over the clear residue and surplus (if any) unto the said A. B. his executors administrators or assigns for his and their own use and benefit or as he and they shall direct *And* each of them the said A. B. and C. D. *Doth* hereby for himself his heirs executors administrators and assigns covenant with the said E. F. and G. H. their executors administrators and assigns that neither of them the said A. B. and C. D. their or either of their executors or administrators shall or will revoke or annul the authorities hereby given or receive &c. [see *ante*, *General Precedent, Dissolution of Copartnership*] or interfere with the execution of the trusts hereby reposed in them but on the contrary shall and will assist the said E. F. and G. H. to the utmost of their power in giving every necessary information as to the business done the charging and making out of the bills or accounts due and owing to them whenever reasonably required so to do *And* the said A. B. doth hereby for himself &c. covenant &c. that he the said A. B. [*Covenant to discharge debts &c.* see *ante*, *General Precedent, Dissolution of Partnership*] *And* the said C. D. in consideration of the premises *Doth* hereby remise release and for ever quit unto the said A. B. his executors administrators and assigns all and all manner of accounts reckonings dealings and transactions action or actions suit or suits cause or causes of actions claims or demands whatsoever which he the said C. D. his executors administrators or assigns now hath or ever had or can or shall or may have claim or challenge for or in respect of any act deed matter or thing whatsoever from the date or commencement of the late copartnership or prior to the date of these

No.
CCCXXXV.
*Assignment of
Debts.*

Covenant from
A. B. and C. D.
that they will
not revoke, &c.

Covenant to
indemnify
C. D.

Release from
C. D.

No.
CCCXXXV.
*Assignment of
Debts.*

C. D. not to
bear the ex-
pense of this
assignment.

presents *Provided always* and it is hereby expressly understood by the parties to these presents that nothing herein contained shall subject the said C. D. to any demands costs or charges for preparing or executing these presents or any former instruments or writings since the dissolution of the said copartnership or the execution of the trusts thereof respectively but that the same shall be wholly and exclusively borne paid and discharged by the said A. B. his executors or administrators *In witness &c.*



No.
CCCXXXVI.

*Bonds
(Indemnity).*

Obligation.

Recital of part-
nership.

Agreement for
dissolution.

Assignment.

Condition.

No. CCCXXXVI.

Bond from a continuing to a retiring Partner.

Know all Men &c. Whereas the above bounden (*continuing partner*) and the above named (*retiring partner*) have for some time carried on the trade or business of _____ in copartnership *And whereas* it hath been agreed that the said copartnership should henceforth cease and determine and that the said (*R. P.*) should assign unto the said (*C. P.*) all his share and interest in the copartnership for the sum of £_____ to be paid by instalments in manner following (that is to say) one fourth &c. and that the payment of the several sums should be secured by four bills of exchange and also by the bond of the said (*C. P.*) *And whereas* by an indenture bearing even date herewith and made between the several parties hereto the said (*R. P.*) hath duly assigned all his share in the said copartnership unto the said (*C. P.*)

Now the Condition of the above written bond or obligation is such That if the above bounden (*C. P.*) his heirs executors or administrators do and shall well and truly pay or cause to be paid all and every the said bills of exchange so accepted by him the said (*C. P.*) in favour of the said (*R. P.*) his executors administrators or assigns as and when the same respectively shall become payable And also do and shall well and effectually indemnify protect and save harmless the said (*R. P.*) his executors and administrators of and from all debts and sums of money now due or growing due from the said (*R. P.*) and (*C. P.*) or either of them or which shall or may at any time hereafter be or become due from them the said (*R. P.*) and (*C. P.*) their executors or administrators for or on account of the said copartnership

or joint trade And also do and shall well and truly observe fulfil perform and keep all and singular the covenants conditions clauses stipulations and agreements in the said hereinbefore in part recited indenture of dissolution which on the part of the said (*C. P.*) his executors or administrators are or ought to be observed fulfilled performed and kept according to the true intent and meaning of the same respectively Then &c.

No.
CCCXXXVI.
Bonds
(*Indemnity*).

No. CCCXXXVII.

No.
CCCXXXVII.
Bonds
(*Indemnity*).

Bond of Indemnity from a surviving Partner to the Executrix of a deceased Partner.

Know all Men &c. Whereas by indenture bearing even date herewith and made between the above bounden (*surviving partner*) and the above named (*executrix*) for the considerations therein mentioned the said (*E.*) hath assigned unto the said (*S. P.*) the one full moiety or equal half part and all other the part and share belonging to her as executrix as aforesaid of and in the goods debts and monies and things belonging to the said joint stock in trade between the said parties at the time of the decease of the said (*testator*) And it hath been also agreed that the said (*S. P.*) should execute the above written bond or obligation with a condition for making void the same as hereunder written *Now &c.* That if the said (*S. P.*) do and shall discharge and at all times save and keep harmless and indemnified the said (*E.*) her heirs executors and administrators and her and their lands tenements goods and chattels of and from all and every the debts and sums of money which at the time of the decease of the said (*T.*) were due and owing by and from the said partners and which on the day of the date hereof are yet due and owing and undischarged to all or any person or persons whatsoever for or on account of the said late copartnership trade And of from and against all actions suits costs charges and damages which shall or may be commenced and prosecuted against her the said (*E.*) as executrix as aforesaid or which she may sustain or be put unto by reason of the said debts or any of them in anywise howsoever Then &c.

Obligation.
Recital of release.

Condition.

See other forms of bonds relating to Copartnership, *ante*, Nos. CCLI., CCLII., pp. 522, 523.

No.
CCCXXXVIII

*Notice
(Dissolution).*

No. CCCXXXVIII.

*Notice of Dissolution from one Partner to another, pursuant to
a Power in the Articles.*

Sir—I require you to take notice that it is my intention to retire from and determine the copartnership now subsisting between us on the day of next (being at the expiration of six months) in pursuance of the power contained in the deed or articles of copartnership And I hereby further require that upon such dissolution of the said copartnership you will execute to me a deed of indemnity against the debts of the said copartnership as in the said articles is mentioned a draft of which will in due time be submitted to you for your approbation I being ready to execute any such assignment or assurance as shall be requisite or proper on my part.

To Mr. copartner of

A. B.

No.
CCCXXXIX.

*Notice
(Dissolution).*

No. CCCXXXIX.

Notice to dissolve a Copartnership immediately.

I do hereby give you notice that it is my intention to determine and I do hereby determine the said copartnership trade on the day of next And I do hereby require you on or before that day to render a just true and particular account of the said joint concern.

No. CCCXL.

Public Notice.

No. CCCXL.

Notices of Dissolution to be published.

Obs. As to the importance of such notices, for the purpose of discharging partners from future liabilities, see Pref. sect. 14. Where the notice purports to be an agreement for a dissolution, it must be stamped as an agreement before it can be given in evidence of a dissolution, *May v. Smith*, 1 Esp. 283. But where the notice simply recites that a dissolution had already taken place, a stamp is not necessary.

No. CCCXLI.

Short Form.

No. CCCXLI.

Short Form.

Notice is hereby given that the copartnership between (*parties*) expires on the day of next and that the bank will be continued by (*new partners*) under the firm of

No. CCCXLII.

Another Form.

No. CCCXLII.

Another Form.

Notice is hereby given that the copartnership carried on for some time past at by A. B. and C. D. under the firm of A. B. & Co. was this day dissolved by mutual consent Mr. A. B. is empowered to discharge and settle all debts due to and by the said copartnership concern.

COVENANTS.

- | | |
|------------------------------------|--------------------------------------|
| 1. <i>Definition.</i> | 4th. <i>Joint or several.</i> |
| 2. <i>Different Kinds.</i> | 5th. <i>Executed or executory.</i> |
| 1st. <i>Real or Personal.</i> | 6th. <i>Qualified or general.</i> |
| 2nd. <i>Running with the Land.</i> | 3. <i>Proper Words.</i> |
| <i>Collateral.</i> | 4. <i>Construction of Covenants.</i> |
| <i>Who may take advantage of</i> | 5. <i>Discharge of Covenants.</i> |
| <i>Covenants, or are bound by</i> | 6. <i>Effect of Covenants.</i> |
| <i>them.</i> | 7. <i>Stamp.</i> |
| 3rd. <i>Express or implied.</i> | |

SECT. 1. A covenant is the agreement of two or more persons by deed, whereby one of the persons doth promise to the other that something is or is not done already, or shall or shall not be done afterwards, Shep. Touchst. 160. And there is this difference between a covenant and a simple agreement, that an agreement may be by parol or verbal, but a covenant must be created by deed in writing, sealed and delivered by the parties. And an action of covenant will not lie upon a verbal agreement, for it cannot be grounded without

Covenants.

a deed. Between a covenant and a condition there is a difference as to the remedy; a condition broken defeats an estate, and gives a right of entry; but a covenant broken gives an action only.

Different kinds.

2. Covenants are of different kinds, as—

Real or personal.

1st. They are real or personal: a covenant real is, where a man ties himself to pass a thing real, as lands or tenements; and a covenant personal is, where the same is annexed to the person, and merely personal, as if a person covenant with another to build a house, or to serve him, *Co. Litt.* 114. See *Platt on Covenants*, pp. 60—70.

Running with the land.

2nd. Covenants are inherent, or run with the land, when they tend to the support of the land, or thing granted, as, to repair the demised premises; or they are collateral when they do not concern the subject of the demise, as, to build a house on land not parcel of the demise, or to pay a sum of money. The word “give” or the word “grant” in a deed executed after the 1st October, 1845, does not imply any covenant in law in respect of any *tenements* or *hereditaments*, except so far as either of those words may, by force of any act of parliament, imply a covenant, 8 & 9 Vict. c. 106, s. 4. The operation of implied covenants is, according to the general rule, superseded by an express covenant for quiet enjoyment, *Line v. Stephenson*, 5 Bing. N. C. 183; *Woodhouse v. Jenkins*, 9 Bing. 431; 2 M. & Sc. 599. See *Adams v. Gibney*, 6 Bing. 656; 4 M. & P. 491; *Williams v. Burrell*, 1 C. B. 402. The heir may take advantage of inherent covenants, though he is not bound by them, unless expressly named, *Lougher v. Williams*, 2 Lev. 92. Assigns, as well as executors and administrators, are bound by them, although not named, and may likewise take advantage of them. Assigns are not bound by collateral covenants, although named, *The Mayor of Congleton v. Pattison*, 10 East, 130. An executor and administrator is bound by every covenant in respect of the assets which come into his hands, whether he be named or not, unless it be such a covenant as is to be personally performed by the covenantor, and there has been no breach before his death. A covenant by a man for himself and his assigns extends to all his representatives, and consequently to a devisee; but not to an appointee, who takes no interest from the covenantor, *Roach v. Wadham*, 6 East, 289. This rule of law has to be borne in mind in many cases, particularly when the purchaser is to enter into covenants as to not building on the purchased property or the like. See *Sugd. V. & P. Ch. XIV. Sect. 1.*

Who may take advantage of covenants, or are bound by them.

A covenant between vendor and purchaser on the sale of land that the purchaser and his assigns shall use or abstain from using the land in a particular way will be enforced in equity against all subsequent purchasers with notice, independently of the question whether it be one which runs with the land, so as to be binding upon subsequent purchasers at law, *Tulk v. Moxhay*, 1 Phill. C. C. 774; 11 Beav.

571; *Mann v. Stephens*, 15 Sim. 377; *Coles v. Sims*, 5 De G., M. & G. 1. A covenant may be contained in a deed poll as well as in an indenture, if the covenantee be named in the deed, *Green v. Horne*, Salk. 197. Under an indenture executed after the 1st October, 1845, the benefit of a condition or covenant respecting any tenements or hereditaments may be taken by a party not named a party to the same deed, 8 & 9 Vict. c. 106, s. 4. A covenantee in an ordinary indenture, who is a party to it, may sue the covenantor who executed it, although he himself has not executed it, notwithstanding there may be cross covenants on the part of the covenantee which are stated in the deed to be the consideration for the covenants on the part of the covenantor, *Morgan v. Pike*, 14 C. B. 473; 23 Law J., C. P. 64.

3rd. A covenant may be either express or implied. An express covenant is that which is actually expressed in words. An implied covenant, or a covenant in law, is that which the law intends or implies, from the nature of the contract, although not expressed in words; as, when a lease is made by the words "demise and grant," without any express covenant for quiet enjoyment; yet in this case the law intends that the lessee shall quietly hold and enjoy the demised premises, *Shep. Touch.* 161; *Granger v. Collins*, 6 M. & W. 458; *Hinde v. Gray*, 1 M. & Gr. 195. The word "grant" in an assignment creates an implied covenant for quiet enjoyment. The defendant, who was lessee of certain premises, *granted* and assigned them by indenture to the plaintiff, who, having been distrained upon for rent in arrear to the superior landlord before the assignment, brought *assumpsit* to recover the money under the distress, and relied upon an express promise by the defendant to repay it. It was held, that as covenant would lie on the covenant implied by the word *grant*, *assumpsit* would not lie on any implied contract to indemnify the plaintiff, nor on the express promise, which was not founded on a new consideration, *Baber v. Harris*, 1 P. & Dav. 360. A covenant is said to run with the land when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to run with the reversion when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion, 1 Smith's L. C. pp. 42—72, 4th ed., where this subject is treated in a learned note.

4th. Covenants may likewise be joint or several, or joint and several. Where the interest is joint, the covenant is held to be joint, although the words may import a joint and several covenant, *Eccleston v. Clipsham*, 1 Saund. 153. On the other hand, where the interest is several, the covenant is held to be several, although the words import a joint covenant, *Withers v. Bircham*, 3 B. & C. 254; and this applies to covenantors, as if two tenants in common, or several tenants,

Express or implied.

Joint or several.
Joint and several.

Covenants.

join in a grant of a rent-charge, in law this grant shall be several, although the words are joint, *Browning's case*, Plowd. 140, recognizing *Windham's case*, 5 Co. 7; and also to covenantees, as warranty to two of certain lands, was held to enure as several warranties in respect that they were severally seised, the one of part of the land and the other of the residue in severalty, *Windham's case*, 5 Co. 7, 8, citing *Cook v. Wotton*, Dy. 337. See *Palmer v. Sparshott*, 4 Scott, N. R. 748; 4 M. & G. 137.

The rule is, that a covenant will be construed to be joint or several according to the interest of the parties appearing upon the face of the deed, if the words are capable of that construction, not that it will be construed to be several by reason of several interests, if it be expressly joint, *James v. Emery*, 5 Price, 533; Shep. Touch. by Preston, 166; *Sorsbie v. Park*, 12 Mees. & W. 158. The rule that covenants are to be construed according to the interest of the parties, is a rule of construction merely, and it cannot be supposed that such a rule was ever laid down as could prevent parties, whatever words they might use, from covenanting in a different manner. It is impossible to say, that parties may not, if they please, use joint words, so as to express a joint covenant, and that because a covenant may relate to several interests, it is therefore necessarily not to be construed as a joint covenant. If there be words *capable of two constructions*, the court must look to the interest of the parties which they intended to protect, and construe the words according to that interest, *per Parke, B., Keightley v. Watson*, 3 Exch. 722, 723. See *Pugh v. Strongfield*, 3 C. B., N. S. 2; see Platt on Covenants, pp. 115—136.

Thing executed
or executory.

5th. A covenant may be of a thing executed, that is, that it is done; or of a thing executory, that is, that it shall be done, either at one time or from time to time. On covenants of this latter kind an action will lie as often as a breach shall happen, Shep. Touchst. Prest. ed. 162.

Qualified or
general.

6th. Covenants may also be qualified when they are restrained to the acts of the vendor himself and those claiming under him or his ancestors, or general covenants when they are extended to all persons whomsoever having a right to the lands in question, whether such title be derived from the vendor or his ancestors or not; this latter kind of covenants is never entered into except where there is a defect in the title, and in that case it is more usual to give an indemnity. The covenants for title in mortgages are general, but in mortgages containing a power of sale, it is usual to qualify the covenant for further assurance, by providing that the expenses of further assurances, after the sale and conveyance under the power, shall be borne by the parties requiring the same.

Proper words.

3. The word covenant is not necessary to make a covenant, it is enough if the intention of the parties mutually to contract is apparent

Covenants.

from the general scope of an instrument under seal, more especially where it commences with the words "It is hereby agreed by and between the said parties in manner following," *Wood v. Copper Miners Company*, 7 C. B. 906. Any words which show the concurrence of the parties to the performance of an act is effectual for that purpose, *Shep. Touchst.* 162; 1 *Leon.* 324; 1 *Ch. Ca.* 294; therefore the word "agree" has been held to make a covenant, 1 *Roll. Abr.* 518 (C) pl. 3; or the words to acknowledge oneself to be accountable, *ib.* pl. 5; but where words beginning any sentence are conditional, and give another remedy, it has been held that they shall not be construed a covenant; but if words of condition and covenant be coupled together, as "Provided always and it is covenanted," in that case they may be adjudged to be both a condition and a covenant, *Shep. Touch.* 162. One who covenants for himself, his heirs, executors and administrators, shall be personally bound by his covenant, though he describes himself in the deed as covenanting for and on the part and behalf of another person, *Appleton v. Binks*, 5 *East*, 148.

4. Covenants are to be construed according to the obvious intention of the parties, as collected from the whole context of the instrument, and according to the reasonable sense of the words; see *Platt on Covenants*, pp. 136—145; and if there be any ambiguity it shall be taken most strongly against the covenantor, *Warde v. Warde*, 16 *Beav.* 103.

Construction of covenants.

5. Covenants cannot be discharged except by deed, 1 *Selw. N. P.* 511, 10th ed. A parol agreement therefore cannot be the foundation of an action upon a covenant under a seal whereby the parties bound themselves to perform a different contract, *Thompson v. Brown*, 1 *Moore*, 358; see *Platt on Covenants*, 591. A covenant for the payment of a sum certain, although the payment does not accrue until after notice given, cannot be discharged by parol before breach, *Spence v. Healey*, 8 *Exch.* 668; 22 *Law J., Exch.* 249.

Discharge of covenants.

6. Covenants may sometimes operate and produce transmutation of possession, as a covenant to stand seised to uses; see 2 *Sand. Uses*, tit. *Covenant to stand seised to Uses*; 3 *Byth. Conv.* by Sweet, pp. 670—680.

Effect of covenants.

7. The stamp on a deed of covenant is prescribed by 13 & 14 *Vict. Stamp. c. 97*, tit. *Covenant*. See *post*, *DEEDS*.

Stamp.

No. CCCXLIII.

*Commencement of various Covenants.*No.
CCCXLIII.*Commencements.*

1. And the said A. doth hereby for himself his heirs executors and administrators covenant with the said B. his heirs and

Covenant by one with one.

No.
CCCXLIII.
Commencements.

Joint and
several cove-
nants.

By two as to
his own acts
and the acts of
former owner.

By joint
tenants or
tenants in com-
mon in respect
of his own
share.

By two in
respect of his
own share.

By two, the
married man
for the acts of
himself and his
wife with two.

assigns [*if real estate, or* "his executors administrators and assigns," *if personal estate*].

2. And the said A. and B. do hereby jointly for themselves their heirs executors and administrators and each of them doth hereby severally for himself his heirs executors and administrators covenant with &c.

3. And each of them the said A. and B. (*vendors*) so far as relates to the acts deeds neglects and defaults of the said (*the late owner*) and so far as relates to the acts deeds neglects and defaults of himself and of his heirs executors and administrators doth hereby for himself his heirs executors and administrators covenant with the said C. (*the purchaser*) his heirs and assigns that notwithstanding any act deed or thing by them the said A. and B. or either of them or the said (*late owner*) done executed or omitted or knowingly suffered They &c.

4. And each of them the said A. B. and C. so far as relates to his and her own acts deeds and defaults doth hereby for himself and herself his and her heirs executors and administrators and as to his and her one undivided fourth part or share of and in the lands and hereditaments hereby granted or intended so to be and the right to convey the quiet enjoyment freedom from incumbrances and further assurance of the same fourth part or share And the said D. so far as relates to the acts deeds and defaults of himself and of the said M. his wife and her heirs doth hereby for himself his heirs executors and administrators and as to the one undivided fourth part or share of the said M. D. or of the said D. in her right of and in the same lands and hereditaments and the right to convey quiet enjoyment freedom from incumbrances and further assurance of the same fourth part or share covenant with the said (*purchaser*) his heirs and assigns.

5. And each of them the said A. and B. so far as respects his one undivided moiety or equal half part or share of and in the hereditaments and premises hereby granted or intended so to be and the acts and deeds relating thereto and not further or otherwise doth hereby separately for himself and for his heirs executors and administrators covenant with &c.

6. And the said A. so far as relates to his own acts deeds and defaults and the acts deeds and defaults of M. his wife doth hereby for himself his heirs executors and administrators and the said B. so far as relates to his own acts deeds and defaults doth hereby for himself his heirs executors and administrators covenant with the said C. and D. their heirs and assigns [*where*

the estate is conveyed to trustees or others as joint tenants, or "the said C. and D. and each of them their and each of their heirs and assigns" where the estate is conveyed to tenants in common].

7. And the said A. doth hereby for himself his heirs executors and administrators and for the said M. his wife and her heirs as to and concerning only her life estate in the said lands and hereditaments hereby granted or intended so to be and the acts and deeds which relate to or concern the same life estate and so as to be answerable only for the value thereof And the said (*remainderman*) doth hereby for himself his heirs executors and administrators and as to and concerning the remainder in fee simple of and in the same lands and hereditaments subject to and expectant on the life estate of the said M. and the acts and deeds which relate to or concern the same remainder in fee simple and so as to be answerable only for the value of that estate to be considered as an estate in possession after the decease of the said M. and in the meantime as a remainder covenant &c.

No.
CCCXLIII.
Commencements.

By tenant for
life and
remainderman
in fee on sale.

8. And each and every of them the said (*four covenantors*) severally separately and apart from the others of them doth hereby for himself respectively and his respective heirs executors and administrators and so as only to be answerable to the extent of the part share or proportion of himself or of himself in right of his wife of and in the said lands and hereditaments hereby granted or intended so to be or of and in the said purchase money arising from the sale thereof and so that neither of them the said (*covenantors*) or his heirs executors or administrators may be answerable or accountable for the acts deeds and defaults of any other or others of them his or their heirs executors or administrators or of the wife of any other of them or of her heirs executors or administrators covenant with &c.

By several to be
answerable
only to the ex-
tent of their
respective in-
terests.

No. CCCXLIV.

*Deed of Covenant from a Managing Clerk of a Banking-house,
and Surety for the faithful Execution of his Office.*

No.
CCCXLIV.
*Indemnity
(Clerk).*

*This Indenture made &c. Between (Clerk) of &c. of the first
part (Surety) of &c. of the second part and (Principals) of &c.
of the third part Whereas the said (P.) carry on the trade or Recital.*

No. CCCXLIV. <i>Indemnity</i> <i>(Clerk).</i>	business of bankers at. and have agreed at the request of the said (C.) to employ him in the superintendence and management of the said banking concern at the salary of £ per annum upon the said (C.) and also the said (S.) entering into the covenants hereinafter contained <i>Now this Indenture witnesseth</i> That in pursuance of the said agreement he the said (C.) for himself his heirs executors and administrators doth hereby covenant with the said (P.) their executors and administrators in manner following (that is to say) That he the said (C.) shall and will henceforth so long as he shall be retained as a clerk in the said banking concern give up the whole of his time and attention to the said business and extend and improve the same to the utmost of his ability for the benefit of the said (P.) And shall and will during such period as aforesaid do and perform all such acts matters and things in or about the said trade or business as the said (P.) shall from time to time direct or appoint And shall not nor will at any time or times hereafter without the consent of the said (P.) or the partners for the time being divulge or make known any of the trusts secrets accounts or dealings of or relating to the said banking concern And that he the said (C.) shall and will so long as he shall continue to be employed as aforesaid be just and faithful to the said (P.) in all his dealings and transactions whatsoever And shall and will from time to time write and enter or cause to be written and entered in such book or books as is are or shall at any time by and at the expense of the said (P.) be provided for that purpose a full and true account of all monies received or lodged in the banking-house and securities for money which shall be the property lodged or deposited with or shall come to the hands of the said (C.) as the clerk of the said (P.) on the account and for the benefit of the said (P.) or the partners for the time being in the said banking concern and of all other matters and circumstances necessary and requisite to manifest the state of the said banking concern which said book or books shall be kept in some convenient place where the same concern is or shall be carried on and shall at all times be open to the inspection of the said (P.) or such other persons as they shall for that purpose appoint <i>And this Indenture further witnesseth</i> That in further pursuance of the said agreement each of them the said (C.) and the said (S.) <i>Doth</i> hereby for himself his heirs executors and administrators covenant with the said (P.) their executors administrators and assigns that
Agreement with clerk. Testatum.	
Covenants. Clerk to give up his whole time.	
Not divulge secrets.	
Be faithful.	
Further tes- tatum.	
Indemnity from clerk and surety.	

they the said (C.) and the said (S.) or one of them their or one of their heirs executors or administrators shall and will from time to time and at all times hereafter save defend and keep harmless and indemnify the capital stock and of the said (P.) or the (a) partners for the time being in the said banking concern of from and against all losses injury or diminution which shall or may happen or arise to the said capital stock on account of any misconduct neglect or non-performance of any of the covenants hereinbefore contained on the part of the said (C.) in his capacity of clerk or for or on account of the said (C.) not duly accounting for and paying to the said (P.) all monies paid to or received by the said (C.) upon account of or as clerk to the said (P.) or the partners for the time being in the said banking concern or for or by reason or on account of any act matter or thing relating thereto *Provided always* and it is hereby declared and agreed by and between the said parties hereto that it shall and may be lawful to and for the said (P.) or the partners for the time being in the said banking concern at any time hereafter at their free will and pleasure to revoke and determine the appointment of the said (C.) as their clerk as aforesaid anything herein contained to the contrary notwithstanding *In witness &c.*

No.
CCCXLIV.
Indemnity
(Clerk).

Liberty to dis-
miss clerk.

No. CCCXLV.

Deed of Covenant and Grants of Powers of Distress and Entry, as an Indemnity against the Payment of the Ground Rent.

No. CCCXLV.
Indemnity
(Lease).

This Indenture made &c. Between (under lessor) of &c. of the one part A. B. of &c. of the other part K. L. of &c. Whereas by an indenture of lease bearing date &c. and made between (ground landlord) of &c. of the one part and the said (under lessor) of the other part In consideration of the rents covenants and agreements therein reserved and contained the said (G. L.) did demise and lease unto the said (U. L.) All that piece and parcel of ground in &c. as particularly described in a plan drawn on the margin of the said indenture now in recital The fence walls therein marked A. to be kept in repair by the said (U. L.) his executors admi-

Recital of
lease.

(a) As to the effect of omitting this clause, so as to restrict the liability of the surety, see BONDS, Pref. sect. 7, *ante*, p. 495.

No. CCCXLV. <i>Indemnity</i> <i>(Lease).</i>	<p>nistrators and assigns and his and their tenants and the persons occupying the lands adjoining to the premises hereby demised to have the liberty of using the north side for the purpose of nailing fruit and other trees and shrubs not overtopping the said walls with the appurtenances to the said premises belonging or appertaining <i>To hold</i> the same premises unto the said (<i>U. L.</i>) his executors administrators and assigns for the term of years to be computed from &c. next ensuing <i>Yielding and paying</i> therefore during the said term unto the said (<i>G. L.</i>) his executors &c. the yearly rent of £ payable quarterly &c. the first quarterly payment to be made on the day of next ensuing and under and subject to the covenants and agreements in the said indenture of lease contained and on the part of the said (<i>U. L.</i>) his executors administrators or assigns to be observed and performed <i>And whereas</i> the said (<i>U. L.</i>) hath built messuages or dwelling houses upon part of the said piece or parcel of ground demised to him by the said in part recited indenture of lease and the said messuages form part of a street called &c. in &c. and are severally numbered But the other part of the said ground is as present unbuilt upon <i>And whereas</i> the said (<i>U. L.</i>) hath apportioned the sum of £ per annum part of the said rent payable by him to the said (<i>G. L.</i>) under the said in part recited indenture of lease upon the said messuages or dwelling houses so erected and built by him as aforesaid <i>And</i> he intends to apportion the sum of £ per annum of the said rent of £ upon the said remaining piece of ground and the messuages or dwelling houses to be erected thereon <i>And whereas</i> the said (<i>U. L.</i>) hath lately sold the messuages so built by him to wit No. in the street to the said A. B. for the whole term of years granted by the said indenture of original lease except the last ten days thereof subject to the yearly rent of £ per annum <i>And whereas</i> the said (<i>U. L.</i>) hath on or before the execution of these presents granted to the said A. B. a due under-lease of the said message or dwelling house sold to him as aforesaid for the residue of the said term of years wanting ten days as aforesaid at the said yearly rent of £ per annum and subject to similar covenants conditions and agreements as those contained in the said original indenture of lease <i>And whereas</i> previous to the completion of the said purchase by the said A. B. it was agreed that the said (<i>U. L.</i>) should indemnify the said A. B. his executors administrators and assigns and also the said message</p>
That under- lessor has built houses.	
Apportionment of rent.	
That under- lessor has sold houses.	
That under- leases have been granted.	
Agreement to indemnify the under-lessees.	

or tenement and hereditaments so demised to the said A. B. as hereinbefore is mentioned from and against all claims and demands in respect of the rents covenants and conditions in and by the said indenture of the day of [*original lease*] reserved and contained *Now this Indenture witnesseth* That in pursuance of the said agreements in this behalf and in consideration of the premises he the said (*U. L.*) doth hereby for himself his heirs executors and administrators covenant with the said A. B. his executors administrators and assigns that he the said (*U. L.*) his heirs executors administrators or assigns shall and will from time to time and at all times during the whole term of years granted by the said indenture of the day of [*original lease*] well and truly pay or cause to be paid unto the said (*G. L.*) his heirs or assigns the said rent of £ reserved and made payable to him and them by the said indenture when and as the same shall become payable according to the same lease *And also* observe and perform all and every the covenants conditions and agreements in the said indenture contained and which henceforth on the lessee's part and behalf are or ought to be observed and performed *And* of and from the said rent of £ and the said covenants conditions and agreements respectively and all distresses entries costs damages and expenses respectively on account thereof shall and will from time to time and at all times hereafter indemnify and save harmless the said A. B. his executors administrators and assigns and the said premises and piece and parcel of ground and messuage and dwelling house so sold and sub-demised to the said A. B. respectively as aforesaid and every part thereof *And also* that if default shall happen to be made by the said (*U. L.*) his executors administrators or assigns in payment of the said rent of £ or in the observance or performance by him or them of any or either of the covenants conditions and agreements in the said original indenture of lease reserved and contained as aforesaid and by which default or defaults any distress or distresses entry or entries shall or may be made in or upon the piece or parcel of ground messuage or dwelling house so sold and sub-demised or if the said A. B. his executors administrators or assigns or any of them shall sustain any loss or damage or be put to any expense by reason of the non-payment of the said rent or non-observance and non-performance of the said covenants and agreements in the said indenture of the day of [*original lease*] reserved or contained Then and in every such case and

No. CCCXLV.

Indemnity
(*Lease*).

Testatum.

Covenant to
pay ground
rent, &c.

And indemnify
under-tenants.

Power of dis-
tress.

No. CCCXLV. when and so often as the same shall happen it shall and may be lawful for the said A. B. his executors administrators or assigns to enter into and upon the other part and residue of the said piece of ground comprised in the said indenture of [original lease] and every and any part thereof in the name of the whole and to distrain the goods and chattels then and there found for the said rent of £ or so much thereof as shall then be unpaid and which the said A. B. his executors administrators or assigns or any of them shall have paid and also of all losses damages and expenses to be incurred by the said A. B. his executors administrators or assigns by reason of the non-payment of the said rent and the distresses then and there found to detain sell and dispose of as in cases of distress for rent reserved in common demises or leases for years *Upon trust* and to the intent that the said A. B. his executors administrators or assigns by and out of the monies to be recovered under such distress or distresses shall and may after retaining the costs and charges of taking the same or otherwise reimburse and indemnify the said A. B. his executors administrators or assigns the said rent of £ or so much thereof as he or they shall have paid and also all losses costs damages and expenses to be incurred by the said A. B. his executors administrators or assigns on account of the non-payment or non-observance of the rent covenants or conditions reserved and contained in the said indenture of the

Indemnity (Lease). — day of [original lease] or any of them *And further* that if the said (U. L.) his heirs executors or administrators shall make default in payment of the said rent of £ to the said (G. L.) in the said indenture of [original lease] reserved or in the observance and performance of any of the covenants conditions or agreements which are or ought to be performed and kept according to the true intent and meaning of the said original indenture of lease and the said rent so in arrear and all losses damages and expenses by the default in payment and observance thereof as aforesaid shall not be raised and satisfied under the provision for that purpose hereinbefore contained Then and in every such case when and so often as the same shall happen it shall and may be lawful to and for the said A. B. his executors administrators or assigns at any time or times after such default in payment as aforesaid to enter into and upon the other part or residue of the said piece or parcel of ground comprised in the said indenture of [original lease] or any part thereof and the same to retain have occupy and enjoy and the

Power of entry.

rents and profits thereof to receive and take *Upon trust* and to the intent that the said A. B. his executors administrators or assigns shall and may by and out of the monies to be raised recovered and received by him or them by virtue of the preceding power (after deducting and retaining to himself and themselves the costs and expenses of recovering and receiving the same rents and profits or otherwise incident to the execution of the said power) reimburse himself or themselves the said rent of £ or so much thereof as he or they or any of them shall have paid or contributed to the payment thereof and all losses costs damages and expenses by reason of the non-payment of the said rent and non-performance by the said (*U. L.*) his executors administrators or assigns of any of the covenants conditions and agreements in the said indenture of [original lease] reserved or contained And it is hereby agreed and declared by and between the parties hereto and particularly the said (*U. L.*) doth hereby direct that every receipt which from time to time shall be given by the said A. B. his executors administrators or assigns for any money rents and profits whatsoever to be received by him or them under the powers aforesaid or either of them shall be valid discharges in the law to any person or persons paying the same for so much money as in any such receipt shall be acknowledged or expressed to have been received and release the person or persons taking the same from all obligation of seeing to the application of the same money rents and profits respectively and from all liability by reason of the misapplication or non-application thereof respectively *In witness &c.*

No. CCCXLV.
Indemnity
(Lease).

Receipts of
trustees to be
valid dis-
charges.

No. CCCXLVI.

Covenant from a Legatee on receiving a Sum of Money from the Executor on Account of his Legacy to execute a Release for the whole Amount as soon as it shall be paid.

No.
CCCXLVI.
Release
(Legatee).

This Indenture made &c. Between (legatee) of &c. of the one part and (executor) of &c. of the other part Whereas the said (E.) is the personal representative of E. F. late of &c. deceased and the said (L.) in right of M. his wife (late M. F.) one of the sisters of the said (E.) is entitled to a part of

No.
CCCXLVI.
Release
(*Legatee*).

the residue of the personal estate of the said E. F. deceased as one of the legatees named in his will *And whereas* the amount of the said share of the said (L.) cannot be ascertained so that a discharge may be taken upon the proper legacy stamp *And whereas* the sum of £ hath this day been advanced by as the agent and on account of the said (E.) on the condition that the said (L.) and M. his wife shall deduct the said sum of £ out of the share of the said (L.) of and in the residue of the personal estate of the said E. F. deceased *Now this Indenture witnesseth* and it is hereby agreed and declared and the said (L.) doth hereby for himself his heirs executors and administrators covenant with the said (E.) his executors and administrators that the said (L.) and M. his wife respectively and their respective executors and administrators shall and will allow the said (E.) his executors and administrators to deduct and retain the sum of £ out of the share of the said (L.) of and in the residue of the personal estate of the said E. F. deceased And that on the payment of the residue of the same share they the said (L.) and M. his wife respectively and their respective executors and administrators shall and will at their own costs and charges execute to the said (E.) his executors and administrators a good and sufficient release or other discharge for the whole of the same share including the said sum of £ *In witness &c. (a).*



No.
CCCXLVII.
Shares
(*Legacy*).

No. CCCXLVII.

Declaration and Deed of Covenant by Legatees as to their expectant Shares, in order to render them transmissible, as though actually vested.

This Indenture made &c. Between C. D. of &c. of the first part G. D. of &c. of the second part and J. D. of &c. of the third part Whereas N. D. late of &c. deceased father of the several parties hereto duly made and published his last will and testa-

Recital of will.

(a) This form may be available in case the will of the testator is not immediately accessible, but it is generally desirable to recite the will in the regular manner.

ment in writing bearing date &c. And after thereby bequeathing several pecuniary legacies to the persons therein named the said testator desired that all monies due to him which might not be realized at his decease might be collected in and vested in Government or some other securities and the yearly produce which might arise from the same and all his other property real and personal might be enjoyed had and taken during the life of his wife in manner therein mentioned and all the remainder of his property and personal estate of whatsoever kind or nature the said testator then gave and bequeathed at his wife's decease to and among his four children the said C. D. G. D. J. D. and H. D. and to the survivors of them in equal proportions share and share alike to be then sold divided or parted as they or the survivors of them might agree upon the same the one having an equal share with the other of them And the said (T.) appointed his said wife and the said C. D. executors of his said will and the said C. D. hath alone since duly proved the same will in the Court of Probate Principal Registry And whereas the said H. D. is at present an infant under the age of twenty-one years but the said parties hereto have respectively attained the age of twenty-one years And whereas it is apprehended that it may be doubtful whether the respective shares of C. D. G. D. J. D. and H. D. of and in the said testator's residuary estate expectant upon the decease of the testator's wife are vested or contingent And in order to obviate any such doubt the said parties hereto as far as they are or may be respectively interested have agreed to enter into the declaration and covenant hereinafter expressed

Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the premises it is hereby agreed and declared by and between the parties to these presents And each of them the said C. D. G. D. and J. D. doth hereby for himself his heirs executors and administrators and so far as he is interested in his share or may become interested in the share or shares of the other or others of them of and in the said residuary estate covenant declare and agree with and to the other or others of them his and their heirs executors administrators and assigns that the reversionary or presumptive estates shares and interests of them the said parties hereto respectively of and in the residue and remainder of the real and personal estates of the said N. D. given and bequeathed as aforesaid by the said in part recited will expectant upon the decease of the

No.
CCCXLVII.
Shares
(*Legacy*). —

Recital of
doubts as to
shares being
vested.

Testatum.

Covenant by
parties as to
their shares.

No.
CCCXLVII.
Shares
(Legacy).

Further
assurances.

Done no act to
incumber.

said E. the widow of the said N. D. and all the shares and interests to which they may become respectively entitled by virtue of the said will of and in the said residuary estate upon the decease of the said H. D. in the lifetime of the said testator's wife shall be equally divided among the said parties hereto and their heirs executors and administrators as tenants in common and shall henceforth as to or between the said parties hereto respectively their respective heirs executors and administrators and so far as their interests respectively in the said real and personal estate may extend be and be considered and deemed transmissible and vested shares and interests in them the said parties hereto respectively And shall and may be henceforth conveyed assigned and disposed of and descend in all respects in the same way and to the same extent as if the said respective shares and interests were now vested And that they the said parties hereto respectively and their respective heirs executors administrators or assigns shall and will make do and execute or procure to be made done and executed all such further and other acts deeds declarations assignments conveyances and assurances in the law whatsoever for the further better more absolutely or satisfactorily confirming and establishing the covenant and agreement hereinbefore contained and for assigning conveying and assuring the said respective shares interests and premises according to the true intent and meaning of the covenant and agreement and these presents as by the other or others of them respectively or his or their respective heirs executors or administrators shall be lawfully and reasonably advised or required And each of them the said C. D. G. D. and J. D. doth hereby for himself his heirs executors and administrators and so far as concerns his own acts and deeds only covenant and declare with and to the other or others of them respectively that they respectively have not at any time heretofore made done committed executed or suffered any act matter or thing whatsoever whereby their respective estates shares or interests in the premises or any part thereof are is can shall or may be impeached assigned conveyed or in anywise incumbered *In witness &c.*

No. CCCXLVIII.

No.
CCCXLVIII.*Between
Mortgagor and
Mortgagee.*

Deed of Covenant on the Part of Mortgagees to stand possessed of the Securities for the Benefit of the Person paying off a Part of the Debt; nevertheless without Prejudice to the Right of the Mortgagee to receive the Residue of his Debt in the first instance.

This Indenture made &c. Between (executors) of &c. the executors of (trustee for the mortgagees) late of &c. deceased of the first part (mortgagees) of &c. of the second part (mortgagor) of the third part and C. D. of &c. (the person paying off part of the debt) of the fourth part Whereas by indenture of assignment bearing date &c. and made between &c. the several messuages tenements and hereditaments therein mentioned were assigned to the said (T.) his executors &c. for the residue of a term of years created by indenture of parts bearing date &c. And whereas the last recited indenture was made subject to a proviso or agreement for redemption of the said messuages &c. and the residue of the said term therein on payment by the person or persons who for the time being should be entitled to the reversion of the said messuages and premises immediately expectant on the determination of the said term unto the said (T.) his executors administrators or assigns of the sum of £ with interest for the same at the rate of £ per cent. per annum on a day mentioned in the said indenture and long since past And whereas by a deed-poll or writing under the hand and seal of the said (T.) and bearing date &c. the said (T.) declared the said sum of £ to have been the proper monies of the said (mortgagees) and to have been advanced by them in equal proportions And whereas the said (T.) died on the day of having first duly made signed and published his last will and testament dated and thereof appointed the said (E.) executors thereof who duly proved the same in the court of on the day of And whereas the said principal sum of £ is still due to the said (mortgagees) under or by virtue of the said mortgage or security made to the said (T.) as aforesaid And upon the request of the said (mortgagor) the said C. D. hath consented and agreed to pay to the said (mortgagees) the sum of £ in part of the said principal sum of £ upon the terms that after and subject to the payment to the said (mortgagees) their executors and administrators of the residue of

Recital of
mortgage.Death of
trustee.Payment of
part of principal
debt by
C. D.

No.
CCCXLVIII.

*Between
Mortgagor and
Mortgagee.*

Executors to
stand possessed
for residue of
term.

Upon trust.
To pay mort-
gagees.

To secure re-
mainder to
C. D.

the said sum of £ and the interest due and to become due for the same residue and the costs charges and expenses in regard to certain proceedings relating thereto the said C. D. shall as to the sum of £ and the interest thereof stand in the place of the said (*mortgagees*) And as to the same sum of £ and interest be entitled to the full benefit of the mortgage or security made to the said (*mortgagees*) as aforesaid *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*mortgagees*) at or before the execution of these presents paid by the said C. D. by and with the privity and consent of the said (*E.*) and at the instance and by the direction of the said (*mortgagor*) testified by their executing these presents the receipt of which the said (*mortgagees*) do and each of them doth hereby acknowledge and of and from the same and every part thereof do and each of them doth acquit release and discharge the said C. D. his heirs executors and administrators and also the said (*mortgagor*) his heirs executors and administrators for ever by these presents It is hereby agreed and declared by and between the said (*mortgagees*) and (*mortgagor*) and the said C. D. and (*E.*) do hereby consent that henceforth and from time to time hereafter the said (*E.*) their executors administrators and assigns shall stand and be possessed of the said messuages &c. assigned to the said (*T.*) for the residue of the said term of years therein to come and unexpired *In trust* in the first place for securing to the said (*mortgagees*) their executors administrators or assigns the sum of £ the remaining part of the said principal sum of £ and the interest henceforth to become due thereon And in the next place and in the meantime subject to the payment of the sum of £ and the interest thereof *In trust* for securing to the said C. D. his executors administrators and assigns the sum of £ the other part or residue of the said principal sum of £ and the interest henceforth to become due and payable for the same *And* also upon further trust that when and as soon as the said (*mortgagees*) their executors administrators or assigns shall have received and been satisfied or paid the said sum of £ and the interest thereof and the costs charges and expenses as aforesaid the said (*E.*) their executors or administrators shall assign the said messuages &c. comprised in the said term of years and assigned to the said (*T.*) as aforesaid unto the said C. D. his executors administrators and assigns for all the residue of the said term of years therein

Subject to the same or like equity of redemption as the said (*E.*) their executors or administrators shall then hold the same *And* the said (*mortgagees*) hereby further declare and the said (*mortgagor*) hereby consents and agrees that subject and without prejudice to the right of the said (*mortgagees*) their executors administrators or assigns to receive the full sum of £ and the interest thereof part of the said principal sum of £ and the full benefit of the said securities as far as the same concern the said sum of £ and the interest thereof and the costs charges and expenses as aforesaid the said sum of £ residue of the said principal sum of £ and the interest thereof and the full benefit of the said security as far as the same (subject and without prejudice as aforesaid) relates to or concerns the said sum of £ and the interest thereof shall henceforth belong to and be held in trust for the said C. D. his executors administrators and assigns *And* each and every of the said (*E.*) (*mortgagees*) and (*mortgagor*) doth hereby for himself his heirs executors and administrators and as to and concerning only the acts deeds and defaults of himself respectively and his respective heirs executors and administrators covenant with the said C. D. his executors administrators and assigns that they the said (*E.*) (*mortgagees*) and (*mortgagor*) have not at any time heretofore made done executed committed or willingly or knowingly suffered and that they respectively and their respective executors administrators or assigns shall not nor will at any time hereafter make do or suffer any act deed or thing whereby or by reason or means whereof the right of the said C. D. his executors administrators or assigns to all or any part of the said sum of £ and the interest thenceforth to become due for that sum or any part thereof respectively may be impeached charged incumbered or affected in any manner howsoever *In witness &c.*

No.
CCCXLVIII.
*Between
Mortgagor and
Mortgagee.*

Mortgagees to
receive principal
and interest.

Done no act to
incumber.

No. CCCXLIX.

Covenant by Mortgagee, on a Mortgagor conveying the Equity of Redemption to a Person, to accept Payment of the Mortgage Debt when tendered, and execute a Conveyance.

This Indenture made &c. Between (mortgagee) of &c. of the first part (mortgagor) of &c. of the second part and A. B. of &c.

No.
CCCXLIX.
*Between
Mortgagor and
Mortgagee.*

No.
CCCXLIX.
Between
Mortgagor and
Mortgagee.

Recital of
mortgage.

of the third part *Whereas* by indenture of release covenant and assignment bearing date respectively the day of grounded so far as the same operated as a release on a lease for a year and made between all those freehold and copyhold lands and hereditaments and also all those leasehold lands &c. were respectively released covenanted to be surrendered and assigned by the said (*mortgagor*) to the said (*mortgagee*) his heirs executors administrators and assigns by way of mortgage for securing the sum of £ and interest *And whereas* the said sum of £ and the sum of £ for an arrear of interest are now due and owing to the said (*mortgagee*) on the said recited security *And whereas* by indenture bearing even date with but executed before the execution of these presents and made between the said (*mortgagor*) of the one part and the said A. B. of the other part All and singular the said freehold copyhold and leasehold hereditaments with their rights members and appurtenances were respectively conveyed covenanted to be surrendered and assigned to the said A. B. his heirs executors administrators and assigns for all the estate and interest of the said (*mortgagor*) in the same lands respectively subject to the existing equity of redemption *And whereas* the said (*mortgagee*) is desirous of assisting and promoting the intended sale thereof and hath agreed to accept and take the principal money and interest due and to grow due on the said hereinbefore recited mortgage and security made to him as aforesaid when and as soon as the same shall be paid to him his executors administrators or assigns and also to execute a conveyance surrender and assignment of the said freehold copyhold and leasehold hereditaments and premises to the said A. B. *Now this Indenture witnesseth* That the said (*mortgagee*) in further pursuance of the said in part recited agreement *Doth* hereby for himself his heirs executors and administrators at the instance and request and by the direction and appointment of the said (*mortgagor*) covenant and agree with the said A. B. his heirs executors administrators and assigns that he the said (*mortgagee*) his executors administrators or assigns or some or one of them when and as soon as the principal sum of £ and all interest secured on the hereinbefore recited mortgage made to the said (*mortgagee*) as aforesaid shall be paid to the said (*mortgagee*) his executors administrators or assigns shall and will accept the same and that he the said (*mortgagor*) his heirs executors administrators or assigns upon the request and at the cost of the said (*mortgagor*) his heirs executors administrators or assigns shall make

Covenant by
mortgagee to
accept money
and execute
conveyances.

sign seal execute and deliver a conveyance surrender and assignment of the said freehold copyhold and leasehold lands tenements and hereditaments and all and singular other the premises herebefore mentioned and particularly described or referred to respectively unto the said A. B. his heirs executors administrators and assigns or to whom he shall direct or appoint free and absolutely discharged of and from all charges and incumbrances with which the same lands and premises have been or shall or may be charged in any manner by the said (*mortgagee*) his heirs executors administrators or assigns or any or either of them *In witness &c.*

No.
CCCXLIX.
*Between
Mortgagor and
Mortgagee.*

No. CCCL.

Deed of Covenants between a Mortgagor and Mortgagee, on the latter having purchased a certain Sum in the Stocks to be lent to the Mortgagor, as soon as he has made a good Title to his Estate.

No. CCCL.
*Between
Mortgagor and
Mortgagee.*

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said C. D. having occasion for the sum of £ hath applied to and requested the said A. B. to advance and lend him the same which he hath consented to do upon having the repayment of the same secured to him by a mortgage in fee of a sufficient part of the estate of the said C. D. situate at in the county of And whereas the said C. D. hath agreed to execute a mortgage as soon as the same can be effectually made of such part of his said estate as shall be approved by the said A. B. And whereas the said A. B. hath on the day of at the request of the said C. D. laid out the sum of £ in the purchase of £ Three per Cent. Consolidated Bank Annuities now standing in the name of him the said A. B. in the books of the governor and company of the Bank of England And whereas the said A. B. and C. D. have agreed to enter into the covenants and agreements hereinafter contained on their respective parts Now this Indenture witnesseth That in consideration of the sum of £ so laid out by the said A. B. in purchasing the sum of £ three per cent. &c. at the request of the said C. D. testified by his being a party to and signing and sealing these presents and also in consideration of the covenants hereinafter contained on the part and behalf of the said A. B. he

Testatum.

No. CCCL.

*Between
Mortgagor and
Mortgagee.*

Covenant to
make out title.

the said C. D. for himself his heirs executors and administrators doth hereby covenant with the said A. B. his executors administrators and assigns That he the said C. D. shall and will with all convenient speed after the execution of these presents at his own expense make out and deliver to the said A. B. his executors administrators or assigns a full abstract of the title of him the said C. D. to the inheritance in fee simple in possession free from all incumbrances of in and to a sufficient extent of land and hereditaments situate at in the county of to be approved by the said A. B. his executors administrators or assigns And that he the said C. D. shall or will with all convenient speed after the title of such property shall be approved by the said A. B. his executors administrators or assigns or his or their counsel in the law make execute and deliver a good and sufficient mortgage in fee of the property so agreed on or approved by the said A. B. unto the said A. B. his heirs and assigns for securing to him the said A. B. his executors administrators and assigns the repayment of the sum of £ together with interest for the same after the rate of 5*l.* for every 100*l.* for a year on the day of next ensuing such interest to commence from the day of now last past *And further* that he the said C. D. his heirs executors or administrators shall and will on executing such mortgage pay satisfy and discharge all such costs charges and expenses as shall be incurred and sustained by the said A. B. his executors administrators or assigns in or about these presents and the investigating the title to the said premises or the preparing or perfecting the title to the said premises or the preparing or perfecting such mortgage as also the expense of transferring the said sum of £ three per cent. &c. or in or about the selling the same and converting the same into money *And also* that in case the said C. D. his heirs executors or administrators shall neglect or fail to make out a good and satisfactory title to a sufficient extent of lands and hereditaments at as aforesaid or shall be unable or omit to make and deliver such mortgage as aforesaid within the space of calendar months after the execution of these presents then and in such case that he the said C. D. his heirs executors or administrators shall and will immediately after the expiration of the said calendar months pay satisfy and discharge all such costs charges and expenses as shall be incurred or sustained by the said A. B. his executors administrators or assigns in or about these presents as

To pay ex-
penses.

aforesaid and also all such costs &c. as shall be incurred or occasioned by the investing the said sum of £ and selling and converting the same into money as aforesaid *And also* all such deficiency if any as shall arise in replacing the said principal sum of £ and repaying the said A. B. his executors administrators and assigns *And further* that in case the said mortgage shall not be completed and the said sum of £ three per cent. &c. shall sell for more than the sum of £ then and in such case such surplus shall go and belong to the said A. B. his executors administrators or assigns *And this Indenture further witnesseth* That in further pursuance of the said agreement and in consideration of the covenants and agreements hereinbefore contained on the part and behalf of the said C. D. he the said A. B. doth hereby for himself his executors and administrators covenant with the said C. D. his executors administrators and assigns That he the said A. B. his executors administrators or assigns shall and will immediately on the execution and delivery of the said mortgage so covenanted to be made to him as aforesaid and on payment of the costs charges and expenses as aforesaid pay or transfer to the said C. D. his executors administrators or assigns the said sum of £ three per cent. &c. together with all the dividends due on the said sum of £ *And* it is hereby mutually agreed and declared by and between the parties to these presents that on the completing and perfecting of the said mortgage to the said A. B. for securing the said sum of £ and interest the said sum of £ three per cent. &c. or the proceeds arising from the sale thereof and all dividends and interest which shall be received thereon in the meantime until such transfer or sale shall be transferred to and accepted by the said C. D. his executors and administrators as and for the account of the said mortgage *And* in case the said mortgage shall be completed he the said C. D. his executors administrators or assigns shall in such case have and be entitled to all the benefit and advantage arising from any advance in the price of the said sum of £ three per cent. &c. and shall also in that case run the risk and bear the loss which may arise from any fall in the price of the said sum of £ three per cent. &c. *In witness &c.*

No. CCCL.

*Between
Mortgagor and
Mortgagee.*To make good
loss in invest-
ing, &c. stock.Mortgagee to
have surplus on
sale of stock.Further tes-
tatum.Covenant from
mortgagee.To transfer
stock.To allow mort-
gagor the divi-
dends,and surplus, if
any, on sale.

No. CCCLI.

Securities.

No. CCCLI.

Deed of Covenants and a Declaration that two Surrenders and a Bond were made to a Person only for securing a Sum of Money.

Recital of
surrender out
of court.

This Indenture made &c. Between (Mortgagor) of &c. of the one part and (Mortgagee) of &c. of the other part Whereas by a memorandum in writing bearing date on or about the day of 18 purporting to be and being a surrender of the copyhold lands and hereditaments hereinafter described the said (mortgagor) Did surrender into the hands of the lord of the manor of F. in the county of by the acceptance of I. H. and T. R. two of the tenants of the said manor according to the custom thereof All those &c. to the use of the said (mortgagee) his heirs &c. And whereas by another memorandum in writing &c. [recite another surrender of other copyhold lands] And whereas [recite bond] And whereas the said two surrenders and the said bond were so made and given to the said (mortgagee) as aforesaid only for securing the payment to him the said (mortgagee) his executors administrators or assigns of the principal sum of £ lent and advanced to complete the purchase of the premises comprised in the said surrenders Now this Indenture witnesseth and it is hereby declared between and by the parties hereto and the true intent and meaning of the said in part recited surrenders and bond and of the parties to the same is hereby declared to be and the said (mortgagee) doth hereby for himself his heirs executors administrators and assigns declare and agree with and to the said (mortgagor) his heirs and assigns that if the said (mortgagor) his executors administrators or assigns do and shall well and truly pay or cause to be paid unto the said (mortgagee) his executors administrators or assigns the sum of £ with interest for the same after the rate &c. on the day of next ensuing the date of these presents without any deduction or abatement whatsoever for or on account of any taxes charges or assessments or any other matter or cause whatsoever Then and from thenceforth he the said (mortgagee) his heirs or assigns shall and will at the request costs and charges of the said (mortgagor) his heirs or assigns well and effectually surrender convey and assure all and singular the said messuages surrendered to the said (mortgagee) as aforesaid with the appurtenances unto and to the use of the

Another sur-
render.

Testatum.

Covenant
from mort-
gagee.

said (*mortgagor*) his heirs and assigns according to the custom of the said manors respectively for ever or unto such person or persons and for such estate or estates as he the said (*mortgagor*) or his heirs or assigns or his or their counsel in the law shall advise and require free from all incumbrances made done or committed by the said (*mortgagee*) his heirs or assigns in the meantime And that from and after full payment of the said sum of £ and interest thereof and until such surrenders conveyances and assurances as aforesaid he the said (*mortgagee*) his heirs and assigns shall and will stand seised and possessed of all and singular the said messuages &c. with the appurtenances *In trust* to and for the use benefit and behoof of him the said (*mortgagor*) his heirs and assigns and to and for no other use intent or purpose whatsoever *And also* that the said in part recited surrenders and bond are a collateral security for the payment of only one and the same principal sum of £ *And* the said (*mortgagor*) for himself his heirs executors and administrators doth hereby covenant with the said (*mortgagee*) his executors administrators and assigns that he the said (*mortgagor*) his executors or administrators shall and will well and truly pay or cause to be paid unto the said (*mortgagee*) his executors administrators or assigns the said principal sum of £ and interest on the day and in the manner hereinbefore appointed for the payment of the same *Provided always* and it is hereby declared and agreed by and between the parties to these presents that in the meantime and until default shall happen to be made in payment of the said sum of £ and interest or of some part thereof at the time hereinbefore mentioned for payment of the same it shall and may be lawful to and for the said (*mortgagor*) his heirs and assigns peaceably and quietly to enter into have hold occupy and enjoy all and singular the messuages surrendered to him the said (*mortgagee*) as aforesaid and to receive the rents issues and profits to and for his and their own use and benefit without any let suit trouble interruption or eviction of or by the said (*mortgagee*) his heirs or assigns or any of them and without any account to be had or given for the same rents issues and profits to the said (*mortgagee*) his heirs or assigns or any of them *In witness &c.*

No. CCCLI.

Securities.Covenant to
pay mortgage
money.Mortgagor to
retain possession
until default.

No. CCCLII.

*To produce
Title Deeds.*

No. CCCLII.

Deed of Covenant for the Production of Title Deeds.

When in separate deed.

Obs. A vendor, who sells part of an estate and retains the title deeds, is generally required to enter into a covenant with the purchaser for the production of the title deeds, and for supplying copies of them. This covenant may either be inserted in the conveyance to the purchaser or be in a separate deed; the latter mode is recommended where the deeds to be produced may, at a future period, be difficult of proof, or tend to throw doubts upon the title as constructive notice of incumbrances. The mischief and inconvenience arising from such covenants, and the disclosures they make, and the notice they give, afford abundant reason for the modern practice of taking such covenants in one or more separate deeds, 1 Prest. Abstr. 153. The above reasons do not apply where the deeds to be produced are recited in the conveyance to the purchaser. Where the covenant is contained in the conveyance to the purchaser, it is usually inserted at the end.

It is observed by a learned author, that cases exist in which it is prudent to take several deeds for the production of the evidence of title, each deed containing a different series, so that one of the covenants may be given over to a future purchaser without any notice of deeds which had better, even for the sake of such purchaser, be kept out of view, 1 Prest. Abstr. 28.

Where an entire estate is sold in lots, it is usually provided by the conditions of sale that the title deeds shall be delivered to the largest purchaser in value, and that he shall covenant with the several purchasers of the other lots for the production of the deeds. See Conditions of Sale, *ante*, pp. 639, 656.

Of what deeds.

A purchaser is not entitled, as a matter of course, to the production of all documents contained in the abstract of title which are not delivered to him, but only of those which are necessary to make out a good sixty years' title. A vendor is not bound to covenant for the production of copies of court roll, or of an indenture enrolled within the statute 10 Ann. c. 18, unless they are in his possession or power, for the purchaser can always resort to the court rolls and have access to the enrolment, a copy of which is evidence, *Cooper v. Emery*, 1 Phill. C. C. 388. See Sugd. V. & P. pp. 477—484, 11th ed. See several forms of deeds of covenant for production of title deeds, 3 Byth. by Sweet, pp. 643—660; Prideaux Conv. pp. 454—461.

Recital of sale.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* by an indenture bearing date the &c. and made between &c. in consideration of the sum of £ paid by the said C. D. to &c. *All those &c.*

together with the rights members and appurtenances thereof were conveyed and assured unto and to the use of the said C. D. his heirs and assigns as therein mentioned *And whereas* the several deeds and writings mentioned or enumerated in the schedule hereunder written are now in the custody of the said A. B. and relate to the title of the said messuages or tenements and premises hereinbefore described *And also* to the title of divers other hereditaments belonging to the said A. B. and upon the treaty for the purchase of the hereditaments hereinbefore described it was agreed that the said A. B. should enter into such covenant with the said C. D. for the production of the said deeds and writings as is hereinafter contained *Now this Indenture witnesseth* That in consideration of the premises he the said A. B. for himself his heirs executors and administrators doth hereby covenant with the said C. D. his heirs and assigns That he the said A. B. his heirs and assigns (unless hindered or prevented by fire or some other inevitable accident) shall and will at any time or times hereafter upon every reasonable request in writing by the said C. D. his heirs or assigns or any person lawfully or equitably claiming any estate right title or interest in the hereditaments comprised in the hereinbefore recited indenture or any part thereof and at the cost and charges of the person or persons requiring the same produce and show forth or cause or procure to be produced and shown forth in England and not elsewhere unto him them or any of them or to such person or persons as he or they shall require or to or before any court or courts of law or equity or other judicature or at or upon any trial or hearing or commission for the examination of witnesses or otherwise as occasion shall be or require the several deeds and writings mentioned and enumerated in the schedule hereunder written for the proof manifestation support or defence of the title of the said C. D. his heirs or assigns or of such person or persons as aforesaid of in or to the said messuage or tenement pieces or parcels of land hereditaments and premises comprised in the said recited indenture or any of them *And also* that he the said A. B. his heirs executors administrators or assigns or some or one of them shall and will from time to time and at all times upon the like request for that purpose (unless hindered or prevented as aforesaid) give or deliver unto the said C. D. his heirs or assigns or such person or persons as aforesaid but at the proper costs and charges of the person or persons requiring the same a fair true

No. CCCLII.

*To produce
Title Deeds.*

 Title deeds in
the possession
of vendor.

No. CCCLII. attested or unattested copies or copy or extracts of all or any part
To produce
Title Deeds. of each or any of the same deeds and writings and suffer such
 copies or extracts to be examined and compared with the originals either by the said C. D. his heirs or assigns or any person claiming as aforesaid or by any person or persons whom he or they shall appoint *And* shall and will in the meantime (unless hindered or prevented as aforesaid) keep the said deeds and writings safe whole uncanceled and undefaced *In witness &c.*

The schedule to which the above written indenture refers.

No. CCCLIII.

No. CCCLIII.

To produce
Title Deeds.

Covenant to
 cease on ven-
 dor's procuring
 a substituted
 covenant.

Provisoes for determining Covenants (a).

Provided always and it is hereby agreed and declared that if the said A. B. his heirs or assigns shall deliver the said deeds and writings or any of them to any person or persons lawfully entitled to the custody thereof and shall thereupon at his or their own expense procure the person or persons to whom the same deeds or writings shall be so delivered to enter into with and deliver to the person or persons then entitled to the benefit of the covenant hereinbefore contained a covenant to the like purport and effect then and thenceforth the covenant hereinbefore contained shall become void so far as relates to the deeds and writings the subject of such substituted covenant.

Or,

Proviso for de-
 termining co-
 venant.

[*Provided always* and it is hereby agreed and declared between and by the parties to these presents that in case the said (*vendor*) his heirs or assigns shall sell or otherwise dispose of all or any of the said pieces or parcels of land and hereditaments to which the deeds and writings enumerated in the schedule hereunder written or any of them relate as have not been so as aforesaid conveyed and assured to the said (*purchaser*) his heirs and assigns and shall thereupon at the costs and charges of the said (*vendor*) his heirs or assigns procure the person or persons to whom the same hereditaments or any part thereof shall be so sold or disposed of to enter into with and deliver to the said (*purchaser*) his heirs or assigns a covenant for pro-

(a) The first proviso is taken from 2 Davidson's Conv. p. 496, 2nd ed.

duction and for furnishing attested and other copies or extracts of the said deeds and writings corresponding (*mutatis mutandis*) with the covenant by the said (*vendor*) hereinbefore contained Then and immediately thereupon the same covenant by and on the part of the said (*vendor*) hereinbefore contained shall (either wholly or as respects such of the deeds and writings enumerated in the schedule hereunder written to which such new covenant shall apply) cease determine and become void any thing hereinbefore contained to the contrary notwithstanding.]

No. CCCLIII.
To produce
Title Deeds.

Or,

[*Provided nevertheless* and it is hereby agreed and declared by and between the parties hereto that if the other hereditaments and premises to which the said deeds and writings respectively relate shall hereafter be sold or otherwise absolutely disposed of and the said (*vendor*) shall procure the purchaser or purchasers thereof to enter into a like covenant to that which is hereinbefore contained with the said (*purchaser*) his heirs and assigns for the production of the said deeds and writings to him and them and shall deliver such deed of covenant duly executed to him or them Then and in that case the covenant hereinbefore contained for that purpose shall from thenceforth cease and be void.]

Proviso to determine covenant.

No. CCCLIV.

Covenant for Production of Deeds by Trustees or Mortgagees.

Obs. The proper form of the covenant for the production of title deeds which are in the possession of trustees or mortgagees is said not to be well settled in the profession. The following form, which is stated to have been settled by an eminent conveyancing counsel of the Court of Chancery, is taken from 2 Davidson's Conv. pp. 247, 248, 2nd ed.

And each of them the said (*covenantors*) but as to the said (*mortgagees*) so far only as relates to their own respective acts and so far as to bind themselves and their representatives only while having the actual custody of the deeds and writings hereby covenanted to be produced and so far as practicable to bind such deeds and writings into whosoever hands the same may come and not so as to bind themselves or their representa-

No. CCCLIV.
To produce
Title Deeds.

- No. CCCLIV. *To produce Title Deeds.* tives or to incur any liability in relation thereto further or otherwise doth hereby for himself his heirs executors and administrators covenant with the said (*purchaser*) his heirs and assigns [*To produce deeds, &c., see ante, pp. 805, 806.*]



No. CCCLV.

No. CCCLV.

To produce Title Deeds.

Covenant for Production of two Sets of Title Deeds by Mortgagees and Trustees.

Recital as to possession of deeds by different parties.

This Indenture made &c. Between A. and B. of the first part C. D. and E. of the second part and (Purchaser) of the third part [In this case it is assumed that the mortgage and trust deeds were recited in this deed, which is supposed to be a conveyance to the purchaser by the mortgagees and trustees] And whereas the several deeds and writings mentioned in the schedules hereunder written or hereunto annexed relate to or concern the title not only of the manor and hereditaments hereby granted or intended so to be but also of divers other hereditaments conveyed or limited by way of mortgage as hereinbefore is mentioned and the several deeds and writings mentioned in the first schedule hereunder written are now in the custody or possession of the said A. and B. as mortgagees as aforesaid as they do hereby admit and acknowledge and the several deeds and writings mentioned in the second schedule hereunder written are now in the custody or power of the said C. D. and E. or some or one of them as such trustees as aforesaid as they do hereby admit and acknowledge and therefore upon the treaty for the aforesaid purchase it was agreed that such covenants for the production of the same several deeds and writings should be entered into as are hereinafter contained Now this Indenture further witnesseth That in pursuance of the last recited agreement and in consideration of the premises the said A. and B. do hereby severally and respectively and for their several and respective heirs executors administrators and assigns and as to and concerning only the deeds and writings mentioned in the first schedule hereunder written and as to and concerning only the acts deeds and defaults of themselves respectively and their respective heirs executors or administrators relating to the same deeds and writings while the same or any of them shall be in their or

Covenant by mortgagees as to deeds in first schedule.

any of their custody or power as such mortgagees as aforesaid
And also for the purpose of binding their assigns respectively so far as it is competent for them so to do without creating any personal liability on their parts respectively for the acts or defaults of such assigns respectively covenant and agree with the said (*purchaser*) his heirs and assigns and the said C. D. and E. as a separate covenant do hereby severally and respectively and for their several and respective heirs executors administrators and assigns and as to and concerning only the deeds and writings mentioned in the second schedule hereunder written And as to and concerning only the acts deeds and defaults of themselves respectively and their respective heirs executors or administrators or any of them relating to the said last mentioned deeds and writings so long as the same shall be or ought to remain in their custody or power as such trustees as aforesaid *And also* for the purpose of binding their assigns so far as it is competent so to do without creating any personal liability on their parts respectively for the acts of such assigns covenant and agree with the said (*purchaser*) his heirs and assigns and the said (*vendor*) as a separate covenant doth hereby for himself his heirs executors administrators and assigns and as to and concerning the deeds and writings mentioned in the said first and second schedules hereunder written covenant and agree with the said (*purchaser*) his heirs and assigns That they the said A. B. C. D. E. and (*vendor*) respectively or some or one of them their or some or one of their heirs executors administrators or assigns shall and will from time to time and at all times hereafter unless prevented by fire or other inevitable accident upon any reasonable request and at the costs and charges of the said (*purchaser*) his heirs or assigns produce and show forth to the said (*purchaser*) his heirs or assigns or to such person or persons as he or they shall by writing direct desire or require or at any trial hearing or examination in any court of law or equity or other judicature or upon the execution of any commission in England as occasion shall be or require the several deeds evidences and writings mentioned in the first and second schedules hereunder written every or any of them for the manifestation defence and support of the estate right title interest property or possession of the said (*purchaser*) his heirs and assigns of in and to all or any part of the manor and other hereditaments hereby granted or intended so to be with the appurtenances *And also* that they the said A. B. C. D. E. and (*vendor*) respec-

No. CCCLV.

To produce
 Title Deeds.

Covenant by
 trustees as to
 deeds in second
 schedule.

By vendor as
 to deeds in
 both schedules.

No. CCCLV.

*To produce
Title Deeds.*

tively or some or one of them their or some or one of their heirs executors administrators or assigns shall and will at the request costs and charges of the said (*purchaser*) his heirs or assigns give and deliver to him or them one or more fair true and attested or unattested copy and extract or copies and extracts of and from the same several deeds evidences and writings or any of them and shall and will permit and suffer such copies and extracts respectively to be examined and compared with the originals thereof respectively either by the said (*purchaser*) his heirs or assigns or by any person or persons whom he or they shall appoint in writing under his or their hand or hands for that purpose *And shall &c. keep deeds [ante, p. 806.]*

The first schedule to which the above written indenture refers.

The second schedule &c. [*as above*].



No. CCCLVI.

*Renewal of a
Lease.*

No. CCCLVI.

Covenant for Renewal of a Lease.

Obs. A covenant in a lease to grant a new lease on the like terms, "with all covenants, grants, and articles," will not include a covenant for a further renewal, *Moore v. Foley*, 6 Ves. 232, unless the covenant for a perpetual renewal be clear and certain, *Iggulden v. May*, 9 Ves. 325; *London (City) v. Mitford*, 14 Ib. 41.

And further that the said vicar and churchwardens of the said parish of A. as aforesaid and their successors for the time being shall and will at the costs and charges of the said (*lessee*) his executors administrators and assigns (if thereto requested by him or them six months before the expiration of the said term hereby demised) grant another lease of the said premises to the said (*lessee*) his executors &c. for the further term of years to commence from the expiration of the term hereby granted thereof at or under the same yearly rent and containing therein the like covenants and agreements as are in these presents contained he the said (*lessee*) his executors &c. executing at the same time a counterpart thereof and also paying a fine or sum of £ to the said vicar or churchwardens or their successors on their executing such new lease *And also (a)* that the

(a) Without some provision to this effect, the covenant will not be construed to extend to a perpetual renewal, see *Obs. supra*.

said vicar and churchwardens shall and will in like manner at the expiration of such new lease so to be granted of the said premises to the said (*lessee*) his executors administrators or assigns at the like request costs and charges of the said (*lessee*) his executors administrators or assigns grant a further lease of the said premises to the said (*lessee*) his executors administrators or assigns for the further term of fourteen years to commence from the expiration of such intended new lease at and under the same yearly rent covenants and agreements as are in these presents contained and so from time to time at the expiration of every such renewed lease of the said premises shall and will at the like request costs and charges grant a like lease thereof to the said (*lessee*) his executors administrators or assigns for the further term of fourteen years to commence from the expiration of every such renewed lease until the full term of ninety-seven years three quarters of a year two months and eleven days to be computed from the commencement of this present lease shall have been granted of the said premises to the said (*lessee*) his executors administrators or assigns by such successive leases as aforesaid he the said (*lessee*) his executors administrators or assigns always paying a fine or sum of £ unto the said vicar or churchwardens or their successors for the time being on their granting every such renewed or further lease of the said premises as aforesaid and also at every such time or times of renewal executing a counterpart or counterparts thereof.

No. CCCLVI.
*Renewal of a
Lease.*

—◆—

No. CCCLVII.

Covenant by the Father of Children, who are entitled to Portions under a Will, to a Purchaser, that they shall release their Portions when of Age (a).

No.
CCCLVII.
*Between Vendor
and Purchaser.*

This Indenture made &c. Between (father) of &c. of the one part and (purchaser) of &c. of the other part Whereas [recite will whereby lands were devised upon trust to raise portions for the children] And whereas by indenture bearing even date herewith &c. [recite conveyance to purchaser] And whereas the said purchase was made by the said (P.) upon an assurance given by

(a) See BONDS OF INDEMNITY, *ante*, Nos. CCLXIII. and CCLXIV., pp. 533, 534.

No.
CCCLVII.
*Between Vendor
and Purchaser.*

the said (*F.*) that the several children of the said (*F.*) should upon their attaining their respective ages of twenty-one years accept their several and respective proportions of the said sum of £ and execute discharges for the same and confirm the said sale *Now this Indenture witnesseth* That for the considerations expressed in the said in part recited indenture and in pursuance of the said agreement in this behalf It is hereby agreed by and between the parties to these presents and the said (*F.*) doth hereby for himself his heirs executors and administrators covenant with the said (*P.*) his heirs and assigns in manner following (that is to say) That all and every the children or child of the said (*F.*) shall and will when and as soon as they shall respectively attain their respective ages of twenty-one years or in case of their or any of their deaths under that age or before the execution of such release as is hereinafter mentioned that the executors administrators and assigns of such and so many of the same children respectively as shall die under the age of twenty-one years or before the execution of such release as aforesaid and without any further or other expense to the said (*P.*) his heirs executors administrators or assigns release exonerate and discharge the said (*P.*) his heirs executors administrators and assigns and the said hereditaments so conveyed as aforesaid from the several legacies and portions and all interest for the same provided for the said children of the said (*F.*) respectively by the said recited will *And* that he the said (*F.*) his heirs executors or administrators shall at all times hereafter until the said hereditaments so conveyed as aforesaid shall be properly and legally discharged from the said legacies and portions well and sufficiently indemnify the said (*P.*) his heirs and assigns and the same hereditaments and every part thereof from and against all claims and demands of the same children respectively and of their several and respective executors administrators and assigns under and by virtue of the last will and testament of the said (*testator*) or otherwise howsoever as far as relates to the said hereditaments conveyed to the said (*P.*) and his heirs as aforesaid and also from and against all costs charges damages and expenses which he the said (*P.*) his heirs or assigns shall or may at any time hereinafter pay sustain or be put unto for or by reason of the said legacies and portions and interest of the same or any part thereof respectively *In witness &c.*

DECLARATIONS.

- | | | |
|--|---|---|
| 1. <i>Definition of a Declaration.</i>
<i>Declaration of Uses and Trusts.</i> | { | 2. <i>Must be in Writing.</i>
3. <i>Stamp Duty on a Declaration.</i> |
|--|---|---|



SECT. 1. A declaration is any form or instrument by which the intentions of parties are expressly declared. This may be done in regard to any matter whatever; but the most usual instruments of this kind are a declaration of uses, manifesting the agreement of parties as to what uses a deed shall enure; and a declaration of trusts, by which trusts are either created or declared. While fines and recoveries were among the common assurances of the realm, the uses to which they were intended to enure were always declared by a separate deed, which, if executed previous to the fine or recovery, was termed "a deed to lead the uses;" if subsequent to the fine or recovery, "a deed to declare the uses." Although the 3 & 4 Will. 4, c. 74, by abolishing these modes of conveyances, has rendered such deeds of declaration unnecessary; yet declarations of uses more or less extensive, according to the circumstances of the case, are required in all conveyances. Declarations for other purposes, but particularly declarations of trusts, whether by separate deed or as part of a deed, are in constant use.

Definition of a declaration.

Different kinds.

Declaration of uses.

Declaration of trusts.

2. Since the stat. 29 Car. 2, c. 3, a declaration by which a use or trust is created or declared must be in writing, but it is not necessary that it should be under seal.

Must be in writing.

3. A declaration of any use or trust of or concerning any estate, real or personal, where made by any writing not being a deed or will, *and not otherwise charged* in the Sched. Part I., 55 Geo. 3, c. 184, tit. *Declaration*, requires a stamp of 1l. 15s., and if it contains 2160 words or upwards, then a further progressive duty of 10s. for every entire quantity of 1080 words above the first 1080. See 13 & 14 Vict. c. 97, Sched. tit. *Progressive Duty* (*post*, DEEDS).

Stamp duty on a declaration.

No. CCCLVIII.

Declaration that several Instruments are for securing the same Annuity.

No.
CCCLVIII.
As to securing Annuity.

And it is hereby declared and agreed by and between the said parties to these presents that the said bond and warrant of attorney (respectively bearing even date with these presents) and the judgment to be entered up under and by virtue of the said

No.
CCCLVIII.
*As to securing
Annuity.*

warrant of attorney *And also* that these presents are respectively executed in consideration of one and the same sum of £ and not in consideration of several sums of £ and for securing one and the same annuity or yearly sum of £ and not for securing several annuities or yearly sums of £ *And* that no execution or executions shall be issued or taken out upon the judgment to be entered up as aforesaid unless or until the whole or some part of some quarterly payment of the said annuity or yearly sum of £ be in arrear by the space of days next after some one of the days hereby appointed for payment thereof.



No. CCCLIX.

*As to
Boundaries.*

No. CCCLIX.

Declaration to settle the Boundaries of Copyhold Lands which have become intermixed with Lands of Freehold Tenure.

This Indenture made &c. Between (*lord of the manor*) of &c. of the first part (*mortgagee*) of &c. of the second part (*vendor*) of &c. and (*trustee*) of &c. of the third part *Whereas* [*recite admission of the vendor to the copyhold lands*] *And whereas* the said (*V.*) has surrendered to or to the use of the said (*T.*) his heirs and assigns *In trust* for the said (*V.*) his heirs and assigns the said acres &c. *And whereas* the said (*L.*) is lord of the said manor of *N.* subject to a mortgage thereof made by him to the said (*M.*) for securing a sum of money with interest *And whereas* the said copyhold lands are intermixed amongst freehold lands and hereditaments of the said (*V.*) *And whereas* all the freehold and copyhold lands and hereditaments of the said (*V.*) or the said (*T.*) his trustee are described in the plan or ground plot in the schedule hereunto annexed *And whereas* the said (*V.*) on the one part and the said (*L.*) on the other part are desirous of determining and settling the boundaries of the said freehold and copyhold lands respectively and to distinguish the lands of copyhold tenure from the lands of freehold tenure and have made an investigation into the facts by all the means within their respective powers and having to their satisfaction ascertained and distinguished which of the said lands are of copyhold and which of freehold tenure they have agreed to make and execute the declaration hereinafter contained as a perpetual and binding evi-

dence between them in all future transactions *Now this Indenture* No. CCCLIX.
witnesseth and it is hereby declared and agreed by and between *As to*
the parties to these presents that the messuage or tenement *Boundaries.*
buildings lands and hereditaments which in the said map or plan
are coloured red and distinguished by the letter [A] are of copy-
hold tenure and are all the lands and hereditaments which are
now held by virtue of the said in part recited admission *And*
it is hereby further declared and agreed by and between the said
parties to these presents that all the residue of the said lands
described in the said map or plan are of freehold tenure and are
not nor are they henceforth to be deemed or claimed to be of
copyhold tenure or to be subject to any suits services duties or
obligations in respect of any tenure by copy of court roll *In*
witness &c.

No. CCCLX.

Declaration of Trust of a Part of a Fund which had been sold No. CCCLX.
out and invested in other Securities. *As to Change of*
Securities.

(*By Indorsement.*)

To all to whom these Presents shall come the within named
(*trustees*) and (*cestui que trust for life*) send greeting *Whereas* Recital of sale
since the date and execution of the within written indenture the of certain
within named C. T. hath departed this life *And whereas* the said shares.
(*T.*) with the consent and approbation of the said (*C.*) hath sold
and disposed of two shares of the undertaking of the navigation
from the to the being part of the within named eight
shares *And* the monies which have arisen by such sale clear of
the expenses attending such sale amount to the sum of £
And whereas the said (*C.*) hath lately purchased of or from I. L. Purchase with
a certain messuage at or for the price or sum of £ *And in* trust-money.
order to complete such purchase he hath requested the said (*T.*)
to advance him the sum of £ part of the monies produced
by the sale of the said two canal shares as aforesaid which they
have consented to do upon having the same secured upon the
said messuage or tenement and hereditaments agreed to be
purchased by the said (*C.*) by way of mortgage in manner
hereinafter mentioned *And whereas* by indenture [*recite inden-*
ture of mortgage by demise to trustees] Subject to the proviso Mortgage to
trustees.

No. CCCLX. *As to Change of Securities.* thereafter contained for making void the same term upon payment by the said (C.) his heirs executors administrators or assigns unto the said (T.) or the survivors or survivor of them his executors &c. of the sum of £ on or before the day of next ensuing with interest for the same after the rate of 5*l.* per cent. per annum in the meantime And from and after the end or sooner determination of the said term of years and in the meantime subject thereto To the use of the said (C.) his appointees heirs and assigns *And whereas* the said (T.) with the consent and approbation of the said (C.) have laid out and invested the sum of £ being the remaining part of the monies produced by the sale of the said two canal shares as aforesaid in the purchase of £ Three per Cent. Consolidated Bank Annuities in the names of the said (T.) in the books of the Governor and Company of the Bank of England *Now know ye* and these presents witness That the said (C.) *Doth* hereby acknowledge testify and declare that the said sum of £ laid out and invested by the said (T.) upon the security of the aforesaid mesuage or tenement lands and hereditaments at aforesaid and the said sum of £ by them laid out and invested in the purchase of £ Three per Cent. &c. as aforesaid were so respectively laid out and invested at the express request and with the consent and approbation of the said (C.) *And* these presents further witness and the said (T.) do hereby declare that they the said (T.) and the survivors or survivor of them and the executors or administrators of such survivor shall and will stand possessed of and interested in the said sum of £ and interest secured to them by the said in part recited indenture of mortgage and the term of years thereby limited and created as aforesaid and the security for the same *And also* of and in the said Three per Cents. &c. and the dividends and produce thereof *Upon and for the trusts* intents and purposes and under and subject to the powers provisoes and declarations in and by the within written indenture expressed and declared of and concerning the said canal shares so sold and disposed of as aforesaid or such of the same trusts intents purposes powers provisoes and declarations as are now subsisting or capable of taking effect *In witness &c.*



No. CCCLXI.

Declaration of Trust by Trustees, and Covenant to Indemnify them from having applied Trust Monies in a Purchase.

No. CCCLXI.

*Indemnity
(Trustees).*

This Indenture made &c. Between (*cestui que trust*) of &c. and H. his wife of the one part and (*trustees*) of &c. of the other part *Whereas* [*recite conveyance of lands and hereditaments to cestui que trust*] *And whereas* the said sum of £ in the said in part recited indenture of even date herewith expressed to be paid by the said (*T.*) as or for the price or consideration for the purchase of the said freehold and copyhold hereditaments was not their own proper money but the same arose by the sale of £ Three per Cent. Consolidated Bank Annuities standing in the names of the said (*T.*) and held by them upon and for the trusts intents and purposes and under and subject to the powers provisoes and declarations mentioned expressed and contained in an indenture dated the day of and made between the said (*C.*) of the first part H. his wife then H. E. spinster of the second part and the said (*T.*) of the third part being the settlement made previously to the marriage then intended and since solemnized between the said (*C.*) and H. his wife *Now this Indenture witnesseth* and the said (*C.*) and H. his wife do hereby respectively acknowledge and declare that the sum of £ mentioned in the said indenture of even date herewith as the price or consideration for the purchase of the said freehold and copyhold hereditaments therein comprised was raised by the said (*T.*) by sale of the said £ Three per Cent. &c. And that the same sum of £ was invested by the said (*T.*) in the purchase of the same freehold and copyhold hereditaments with the consent and approbation and at the request of the said (*C.*) and H. his wife testified by their severally being made parties to and executing these presents *And this Indenture further witnesseth* and the said (*T.*) do hereby respectively acknowledge and declare that the sum of £ in the said in part recited indenture of even date herewith expressed to be paid by the said (*T.*) as and for the price or consideration of the purchase of the said freehold and copyhold hereditaments as aforesaid was not their own proper monies but that the same arose by the sale of the said £ Three per Cent. &c. being part of the trust funds mentioned in or affected by the trusts of the said in part recited indenture of

Recital that
purchase money was paid
out of trust
funds.

Testatum.

Consent of
husband and
wife to the
purchase.

Further testa-
tum.

Purchase
money part of
the trust funds.

No. CCCLXI. settlement of the day of *And* it is hereby agreed
Indemnity
(Trustees). and declared by and between the parties hereto And the said
(T.) do hereby respectively consent and declare that they the
said (T.) and the survivors and survivor of them and the heirs
and assigns of such survivor shall and will stand seised and
possessed of and interested in the said freehold and copyhold
hereditaments comprised in the said in part recited indenture of
even date herewith and expressed to be thereby conveyed and
covenanted to be surrendered respectively upon and for such
trusts intents and purposes And under and subject to such
powers provisoes declarations and covenants as will best corre-
spond with the trusts intents and purposes powers provisoes
declarations and agreements in and by the said indenture of
settlement of the day of expressed and declared of
and concerning the said sum of £ Three per Cent. &c. so sold
as aforesaid or as near thereto as the death of parties and other
circumstances will permit *And this Indenture further witnesseth*
That in consideration of the premises the said (C.) doth hereby
for himself his heirs executors and administrators covenant with
the said (T.) and each of them and their and each of their heirs
executors and administrators that they the said (C.) and H. his
wife or one of them their or one of their heirs executors or
administrators shall and will from time to time and at all times
hereafter save defend and keep harmless and indemnified the
said (T.) and each of them their and each of their heirs executors
and administrators of from and against all actions suits and
other proceedings at law and in equity which shall or may be
brought had commenced or prosecuted against the said (T.) or
either of them their or either of their heirs, executors and admi-
nistrators and of and from all costs charges damages and ex-
penses which the said (T.) or either of them their or either of
their heirs &c. shall or may pay bear sustain or be put unto for
or by reason or on account of the said (T.) having sold the
said £ three per cent. &c. or their having invested the
same sum in the purchase of the said freehold and copyhold
hereditaments or on account of the non-renewal of the grant or
grants of the said copyhold hereditaments upon the decease of
the *cestui que trust* thereof or for or on account of the cesser or
determination of his or their estate or interest therein or for or
on account of the fines heriots customs or services to be per-
formed in respect of the said copyhold hereditaments or other-
wise or for or on account of any act matter or thing in anywise
relating to the said premises *In witness &c.*

Further testa-
tum.

Indemnity to
trustees.

No. CCCLXII.

Declaration that Money advanced is on Joint Account.

No. CCCLXII.

*As to Money
advanced.*

And lastly the said I. E. I. M. and I. B. do hereby declare that the said sum of £ advanced by them upon this present security is advanced by them out of monies belonging to them on a joint account And that the receipt and receipts of the survivors and survivor of them the said I. E. I. M. and I. B. and the executors and administrators of such survivor shall be a sufficient discharge or sufficient discharges for the principal sum of £ and interest or so much thereof as in any such receipt or receipts shall be acknowledged or expressed to be or to have been received.

No. CCCLXIII.

*Declaration for Change of Partners by a Firm to a Firm.*No.
CCCLXIII.*Change of Firm.*

And it is hereby further agreed and declared That these presents are intended to be a security for the sum which shall for the time being be due and owing from the said firm of M. N. & Co. to the said firm of X. Y. & Co. whether the business of the said firms respectively or either of them shall be carried on by the present partners or any of them or by them or any of them with any other person or persons or by any other person or persons only.

No. CCCLXIV.

*Declaration as to Receipts in a Mortgage to a Firm.*No.
CCCLXIV.*Receipts of
Partners.*

And it is hereby further agreed and declared That the receipt or receipts in writing of the person or persons for the time being carrying on the business of the said firm of X. Y. & Co. for any sum or sums of money intended to be secured by these presents shall be a sufficient and effectual discharge or sufficient and effectual discharges for the monies therein respectively expressed to be received to the said (*mortgagors*) and the survivor of them his and their heirs executors administrators and assigns

No.
CCCLXIV.
*Receipts of
Partners.*

or other the person or persons paying the same so that they shall not nor shall any of them be concerned to see to the application of such money nor be answerable for any loss misapplication or nonapplication thereof.



No. CCCLXV.

No. CCCLXV.

*As to Money
advanced.*

Declaration by Cestui que Trust, that Money advanced by Trustees is by his Consent, and by Trustees that Money advanced is Trust Money.

Recital of settlement of trust monies.

This Indenture made &c. Between (cestui que trust) of &c. of the one part and (trustees) of &c. of the other part Whereas certain monies are vested in the said (T.) upon the trusts and to and for the ends intents and purposes of a certain indenture bearing date on or about the day of 18 and made or expressed to be made between the said parties hereto And it was by the said indenture declared and agreed by and between the parties hereto that it should be lawful for the said (T.) or the trustees or trustee for the time being under or by virtue of the same indenture at any time or times during the life of the said (C.) and with his approbation and consent and after his decease then by the proper authority and sole discretion of the said (T.) or the trustees for the time being to change transfer alter or vary all or any of the funds and securities in or upon which the said trust monies or any part thereof should for the time being be invested and place out or invest the same in or upon the like or any other funds or securities the dividends and interest thereof at all times being and remaining upon and under and subject to such and the same trusts ends intents and purposes and such and the same powers provisoes declarations and agreements as were declared or expressed by the said indenture or such and so many of the same as should from time to time be subsisting and capable of taking effect And whereas the said (T.) have this day with the consent of the said (C.) (a) advanced and lent unto W. L. of &c. the sum of £ part of the said trust monies and he the said W. L. hath by an indenture bearing even date with but executed before the execution of these pre-

Of money lent on mortgage.

(a) The consent should be obtained in many cases previously to the loan. See *Bateman v. Davis*, 3 Madd. 98; *Corker v. Quayle*, 1 Russ. & M. 585.

sents granted or otherwise assured the manor lordship or reputed manor and lordship of in the county of and the capital messuage or mansion called or known by the name of and the lands to the said messuage or mansion belonging or appertaining unto and to the use of the said (T.) their heirs and assigns as in the said indenture is mentioned for securing the said sum of £ with interest for the same *Now this Indenture witnesseth* That the said (C.) doth hereby expressly acknowledge testify and declare that the said sum of £ was so lent and advanced by the said (T.) as aforesaid and so placed out and invested by them upon the securities hereinbefore mentioned with the full approbation and consent of him the said (C.) *And this Indenture further witnesseth* That the said (T.) *Do* and each of them the said (T.) *Doth* hereby expressly declare and agree that they the said (T.) their heirs executors and administrators shall and will stand possessed of the said hereinbefore mentioned sum of £ and the interest thereof and the hereinbefore mentioned and all other securities for the same upon the trusts and to and for the ends intents and purposes expressed and declared in and by the said hereinbefore in part recited indenture of the day of 18 of and concerning the monies of which the sum of £ forms a part and the interest thereof or such and so many of the same trusts ends intents and purposes as are now subsisting undetermined and capable of taking effect *In witness &c.*

No. CCCLXV.
*As to Money
advanced.*

Testatum.

Consent of
cestui que
trust.

No. CCCLXVI.

Declaration of Trusts of Stock for securing the Repayment of a Loan of Money and Interest.

No.
CCCLXVI.
*Securing a Loan
of Money.*

This Indenture of three parts Between (*borrower*) of &c. of the first part (*lender*) of &c. of the second part and (*trustees*) of &c. of the third part *Whereas* the said (B.) hath this day transferred the sum of £ Three per Cent. Consolidated Bank Annuities into the names of the said (T.) as they do hereby acknowledge and declare *And whereas* the said transfer was made in consequence of the application of the said (B.) to the said (L.) to advance and lend him the sum of £ on the security of the said

No.
CCCLXVI.
*Securing a Loan
of Money.*

sum of £ Consolidated Bank Annuities *Now this Indenture witnesseth* That in consideration of the sum of £ advanced and paid by the said (*L.*) to the said (*B.*) immediately before the execution of these presents the receipt of which said sum the said (*B.*) doth hereby acknowledge and of and from the same doth hereby acquit release and discharge the said (*L.*) his executors and administrators It is hereby declared and agreed by and between the said parties to these presents and the said (*B.*) doth hereby consent that the said (*T.*) and the survivor of them and the executors and administrators of such survivor shall stand and be possessed of the said sum of £ Three per Cent. Consolidated Bank Annuities and the dividends interest and income thereof *In trust* in the first place for securing to the said (*L.*) his executors administrators and assigns the sum of £ payable and to be paid on the day of together with interest for the same in the meantime at the rate of £5 per cent. per annum to be paid half-yearly on the day of and the day of both now next ensuing and subject thereto *In trust* for the said (*B.*) his executors administrators and assigns *And also upon trust* to permit and suffer the said (*B.*) his executors administrators and assigns in the meantime and until the said (*L.*) his executors administrators and assigns shall require the payment of the same sum of £ to receive the dividends interest and income of the same *And on further trust* that in case all or any part of the said sum of £ shall remain unpaid at any time after any one of the days hereby appointed for the payment of the same Then the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall at the request of the said (*L.*) his executors or administrators and at the costs and charges of the said (*B.*) his executors administrators and assigns by and out of the said sum of £ Bank Annuities and of the dividends interest and income thereof and or of a competent part thereof respectively raise the said sum of £ and all arrears of interest or so much of the same as shall remain due unto the said (*L.*) his executors &c. And the said (*B.*) for himself his heirs executors and administrators doth hereby covenant &c. [*to pay principal and interest*] *In witness &c.*



No. CCCLXVII.

No.
CCCLXVII.

A Declaration of Trust, that the Purchase of a Freehold Estate was in Trust only, and for the Use of another Person.

As to Purchase of Estates.

(By Indorsement.)

To all &c. I (Trustee) of &c. send greeting *Whereas* by an indenture dated and made between in consideration of the sum of £ therein expressed to be paid by me the said (T.) certain messuages farms lands tenements and hereditaments in the parish of in the county of in the said indenture particularly mentioned with the appurtenances were conveyed and assured unto and to the use of me the said (T.) my heirs and assigns *And whereas* the said sum of £ so expressed to be paid by me was not the proper money of me the said (T.) but the said sum of £ was the proper money of (*cestui que trust*) And the said messuages farms lands tenements and hereditaments were purchased by me at the request and desire and on the part and behalf of the within named A. B. *Now know ye* that I the said (T.) do acknowledge and declare by these presents that the sum of £ mentioned to have been paid by me as the consideration of and for the purchase of the said hereditaments and premises comprised in the said indenture of the day of and thereby conveyed to me and my heirs was the proper money of the said A. B. And that the name of me the said (T.) was made use of in the same within written indenture in trust only for him the said A. B. his heirs and assigns and upon and for no other uses trusts intents and purposes whatsoever *And* I the said (T.) do hereby for myself and my heirs declare and agree with the said A. B. his heirs and assigns that I and my heirs will stand seised and possessed of the same messuages farms lands tenements and hereditaments in trust for the said A. B. his heirs and assigns and that I or my heirs executors and administrators shall and will at all or any time or times hereafter at the request costs charges and expenses of the said A. B. convey and assure the same messuages farms lands tenements and hereditaments as he or they shall by any note in writing under his or their hand or hands direct or appoint And that in the meantime and until such conveyance and assurance I the said (T.) and my heirs shall and will stand seised of and interested in all and singular

Recital of conveyance.

As to purchase money.

Testatum.

No.
CCCLXVII.
*As to Purchase
of Estates.*

the aforesaid hereditaments and premises in trust only and for the sole use and benefit of the said A. B. his heirs and assigns for ever *In witness &c.*



No.
CCCLXVIII.
*Of Copyholds
for Lives.*

No. CCCLXVIII.

*Declaration of Trust of Copyholds for Lives by the Nominees
of a Purchaser (a).*

Recital of grant
of copyhold
for lives.

This Indenture made the day of in the year of
our Lord Between I. K. of &c. and L. M. of &c. of the
one part and G. H. of &c. of the other part *Whereas* at a court
baron or customary court holden for the manor of on
the day of the said G. H. and at his request C. D. of
&c. and E. F. of &c. who then held the customary or copyhold
hereditaments hereinafter described for the term of their lives
and the life of the longest liver of them successively duly sur-
rendered into the hands of A. Z. esquire lord of the aforesaid
manor *All &c.* with their appurtenances to the intent that the
lord might regrant the same premises to the said G. H. and the
said I. K. and L. M. for the lives of them the said G. H. I. K.
and L. M. and the life of the longest liver of them successively
according to the custom of the said manor and accordingly at
the same court the said A. Z. granted seisin of the same premises
unto the said G. H. I. K. and L. M. by the rod according to the
custom of the said manor *To hold* the same with the appurte-
nances to the said G. H. I. K. and L. M. for the term of their lives
and the life of the longest liver of them successively by copy of
court roll at the will of the lord according to the custom of the
said manor and the said G. H. was at the same court admitted
tenant accordingly and paid to the lord for a fine on such regrant
and admittance the sum of £ *And whereas* the said G. H.
was the sole purchaser of the aforesaid customary or copyhold
hereditaments and premises and the names of the said I. K. and
L. M. were used in the aforesaid surrender and regrant in trust
only for the said G. H. his executors administrators and assigns
as they the said I. K. and L. M. respectively do hereby admit
and acknowledge *Now this Indenture witnesseth* and in con-
sideration of the premises the said I. K. and L. M. for them-

One of the
grantees sole
purchaser.

Testatum.

selves respectively their respective heirs executors and administrators but not jointly the one for the other of them or the heirs executors or administrators of the other of them do hereby covenant and declare with and to the said G. H. his executors administrators and assigns That they the said I. K. and L. M. respectively and all and every persons and person claiming or to claim by from through or under them or either of them shall and will at any time or times hereafter upon the request and at the costs and charges of the said G. H. his executors administrators or assigns apply for and receive and take admittance according to the custom of the aforesaid manor to all and singular the said customary or copyhold hereditaments and premises hereinbefore described with their appurtenances for the estate term and interest therein to which they respectively may be entitled by virtue of the said recited surrender and regrant and at the like requests costs and charges duly surrender the same premises to the use of such person or persons and in such manner as the said G. H. his executors administrators or assigns shall direct or require And in the meantime and until such last mentioned surrenders respectively shall be made and admittance or regrant be had and obtained by virtue thereof shall and will stand possessed of the same customary or copyhold hereditaments and premises with their appurtenances for all such term estate and interest therein as he or they respectively may be entitled to as aforesaid in trust only for the said G. H. his executors administrators and assigns and shall and will pay apply and dispose of the rents issues and profits thereof accordingly And the said G. H. for himself his heirs executors and administrators doth hereby covenant with the said I. K. and L. M. respectively their respective heirs executors and administrators that he the said G. H. his heirs executors and administrators shall and will at all times hereafter well and effectually save defend keep harmless and indemnified the said I. K. and L. M. respectively their respective executors and administrators and their and every of their lands and tenements goods and chattels of from and against the payment of any fines quit rents sum or sums of money and the rendering of any heriot or heriots which shall at any time or times hereafter accrue to the lord or lady lords or ladies for the time being of the manor of aforesaid and of from and against all actions suits losses costs charges damages and expenses whatsoever which can shall or may or could or might be commenced or prosecuted against

No.
CCCLXVIII.
*Of Covenants
for Lives.*

Two covenant
to stand seized
in trust for
third.

Covenant by
party interested
to indemnify.

No.
CCCLXVIII.
*Of Copyholds
for Lives.*

Trustees not to
be charged, &c.

or be incurred or sustained by the said I. K. and L. M. respectively their respective executors or administrators by reason or means of their names being so used as *cestui que vies* in the said in part recited surrender and regrant as aforesaid or anywise in relation thereunto *Provided always* and it is hereby agreed and declared by and between all the said parties hereto that the said I. K. and L. M. respectively their respective executors and administrators shall not be responsible the one for the other or others of them nor for the receipts payments acts deeds or wilful defaults of the other or others of them and that they respectively shall not be charged nor chargeable with nor accountable for any monies other than such as they respectively shall actually receive nor with nor for any loss or damage which may happen by placing all or any part of the monies to be received by them or either of them as such trustees respectively as aforesaid in any bank or banker's hands or elsewhere for safe custody nor otherwise in relation to the trusts aforesaid so that the same happen without his or their respective wilful neglect or default *In witness &c.*



No.
CCCLXIX.
*As to Purchase
of Stock.*

No. CCCLXIX.

*Declaration of Trust of Funds Exchanged and Purchased for
the Uses of a Settlement.*

Recital of
settlement.

To all &c. (Husband) of &c. and M. his wife and (Trustees) of &c. severally send greeting Whereas by indenture bearing date the day of 18 and made between the said M. then M. P. spinster of the first part the said (H.) of the second part and the said (T.) of the third part being a settlement made in contemplation of a marriage then intended and shortly afterwards solemnized between the said M. P. and the said (H.) part of the property of the said M. P. consisting of was assigned to and vested in the said (T.) upon the trusts in the said indenture mentioned And whereas by the said indenture of settlement it was provided that if the said M. P. and the said (H.) should at any time be desirous of changing any part of the said property into any other fund or funds and should signify the same in writing under their hands to the said (T.) it should then be competent for them the said (T.) to make such exchange as they should be advised pursuant to such notice And should be held upon the

Liberty to
change secu-
rities.

trusts thereby declared or for such of them as should be capable of taking effect *And whereas* the said (*H.*) and M. his wife in pursuance of the said proviso did on the day of signify their desire in writing under their hands to them the said (*T.*) that the said shares of and in should be exchanged into a permanent government fund and the said (*T.*) have accordingly sold the said shares of and in for the net sum of £ and have since invested the same in the purchase of £ Three per Cent. Consolidated Bank Annuities and the same is now standing in their joint names in the books of the Governor and Company of the Bank of England *And whereas* it is also provided by the said recited indenture of settlement that if the said M. P. should at any time thereafter become possessed of any property by legacy gift or otherwise to the value of £ or upwards that then the same should be forthwith invested in the joint names of the said (*T.*) upon the trusts of the said settlement or such of them as should be capable of taking effect *And whereas* the said M. hath lately become possessed of a legacy or sum of £ by the last will and testament of E. L. late of &c. deceased and the said (*H.*) and M. his wife did by writing under their hands bearing date &c. signify to the said (*T.*) their desire that the same should be forthwith invested in Three per Cent. Reduced Annuities and the said (*T.*) have accordingly laid out the same in the purchase of £ three per cent. &c. and the same is now standing in their joint names in the books of the Governor and Company of the Bank of England *Now therefore these presents witness* That they the said (*T.*) do hereby testify acknowledge and declare that they the said (*T.*) by the direction and appointment and at the request and desire of them the said (*H.*) and M. his wife testified by their being parties to and executing these presents *Have* invested and so accepted and *Do* now and shall and will hold retain and keep in their joint names both the said capital sums of £ and £ three per cent. &c. and all net dividends interest and proceeds due and to grow due and payable thereon respectively as and when the same shall be received to and for and upon and subject to all the trusts and purposes in and by the said indenture of settlement declared and provided and to and for no other use whatsoever *In witness &c.*

No.
CCCLXIX.
*As to Purchase
of Stock.*

Exchange of
funds.

Other property
to be invested.

Legacy to wife.

Declaration of
trusts.



No. CCCLXX.

No. CCCLXX.

*As to
Subscription
Funds.*

Declaration of Trust as to Subscription Funds.

Declaration of
trust as to sub-
scriptions.

*To all &c. (trustees) of &c. send greeting Whereas a subscrip-
tion hath been entered into for the purpose of erecting a
and establishing a society for And divers sums of money
have been paid into the hands of the said (T.) Now these Presents
witness That they the said (T.) Do and each of them for him-
self severally and respectively and for his several and respective
executors and administrators Doth by these presents testify and
declare that they have from and out of the aggregate amount of
such subscriptions hitherto received by them laid out and in-
vested the sum of £ in the purchase of the capital sum of
£ Three per Cent. Consolidated Bank Annuities And that
they have duly accepted and do now and shall and will at all times
hereafter hold and stand possessed as well of the said capital
sum of £ Three per Cent. Consolidated Bank Annuities as
also of all such further and other capital sums in the said Bank
Annuities or in any other Government funds or securities as shall
in like manner be purchased by or transferred to them for the
purposes aforesaid and which shall be specified and set forth in
the schedule thereof hereunder written and also of all dividends
interest yearly and other proceeds of all such capital stocks and
securities now due and which shall from henceforth at all times
hereafter accrue due and become payable thereon And all sums
of money which now are or may be so subscribed and paid into
their hands for the purposes aforesaid to for and upon the several
and respective trusts uses intents and purposes as are hereinafter
expressed and declared of and concerning the same (that is to say)
Upon trust to sell assign transfer exchange pay apply and dis-
pose of all or any part of the aforesaid trust property at such
times to such persons and for such uses and purposes as the
aforesaid subscribers or the major part of them at any meeting
to be regularly assembled and convened by public notice for that
purpose shall from time to time resolve order and direct such
resolution or order being made in writing and certified to the
said (T.) or the survivors or survivor of them or the executors
or administrators of such survivor under the hand of the person
presiding in the chair at such meeting And also upon trust in
obedience to any such order or resolution so made and certified
in manner aforesaid forthwith to effectuate or to join and concur*

To apply funds
according to
order.

in effectuating all such sales transfers payments matters and things as shall be contained and expressed in such order and as the same shall require *And* as to the interest dividends and proceeds of the aforesaid capital and capitals together with all such sums of money as shall be subscribed and paid into their hands for the purposes aforesaid from time to time as the same shall be received in trust to invest the same in like manner in and towards the augmentation and increase of the aforesaid capital stocks but subject to the like order and resolution for a disposition thereof as aforesaid *And* in case it shall happen that the purposes for which such subscription has been opened shall be resolved to have become unnecessary or that the same shall be abandoned by the said subscribers or by the major part of them assembled at any meeting to be convened for that purpose in manner aforesaid Then and in either of the said cases *Upon trust* forthwith to sell and dispose of all the said capitals which shall have been so invested and then remaining in their hands as aforesaid and to make up a final account of all the monies so received and paid and by and out of the net balance and produce thereof then remaining in their hands to refund and repay to the respective subscribers their executors administrators or assigns the whole amount of their respective subscriptions or such proportional part thereof as the same will extend to pay *pro ratâ* according to the amount of each subscription subject to such costs charges and deductions as are hereinafter reserved *And* to and for no other use intent and purpose whatsoever *Provided always* and it is hereby declared to be the true intent and meaning of these presents that if any or either of the said (*T.*) or any future trustee or trustees shall die decline or become incapable to act in the execution of the trusts of these presents or shall go to reside abroad or shall be desirous of withdrawing from the trusts hereby in them reposed before the same shall be fully accomplished Then and in that case that the survivors or survivor of the said trustees or the continuing trustees or trustee for the time being of these presents and for this purpose refusing or retiring trustees or a refusing or retiring trustee shall if willing to act in the execution of this present trust be considered continuing trustees or a continuing trustee or the executors or administrators of the last surviving or continuing trustee shall forthwith convene a meeting of the subscribers in manner aforesaid and communicate such decease at such meeting and that in both the said cases it shall be lawful and competent for such meeting or for any other meet-

No. CCCLXX.

*As to
Subscription
Funds.*

To invest dividends, &c.

To repay funds if not wanted for the purposes of the subscription.

New trustees.

No. CCCLXX.

*As to
Subscription
Funds.*

Indemnity to
trustees.

ing duly convened in manner aforesaid to elect and appoint one or more fit and proper person or persons to become a trustee or trustees in the room of such trustee or trustees so dying going abroad declining or becoming incapable to act or desiring to withdraw as aforesaid And that the remaining or surviving trustee or trustees shall and will forthwith join and concur in all such acts transfers matters and things as shall then become necessary for and towards the vesting of all the said trust monies and of the aforesaid trusts or such of them respectively as shall then be subsisting and capable of taking effect in the person or persons who shall be so elected and appointed as aforesaid And that all such new trustee or new trustees so to be elected as aforesaid shall be permitted to act in the management and concerns of the said trusts hereinbefore expressed either solely or in conjunction with the remaining or surviving trustee or remaining or surviving trustees as the case may be in the same manner to all intents and purposes as if he or they had been an original trustee or original trustees and had become party to these presents *Provided always* and it is hereby declared that the said trust monies and every part thereof respectively are taken and accepted by them the said parties hereto and are so deemed appointed and agreed by the said subscribers upon this express condition that neither of them the said (T.) their executors or administrators or any trustees to be appointed as aforesaid shall be at any time or times soever made liable for any more stock or money than shall actually come into his or their own proper hands or for the loss or variation in the price of stocks or for the failure of any banker broker or other person with whom any part of the trust property may be deposited or be liable for any other than his own immediate and respective wilful acts deeds and defaults *And also* that each and every of them his their and each and every of their executors administrators and assigns shall have full and free liberty from and out of all or any part of the said respective trust monies in the first place to reimburse and deduct to his and their own proper use and benefit all sums of money costs charges damages expenses and demands whatsoever which he or they or any or either of them can shall or may reasonably incur bear sustain or be put unto in any manner howsoever by reason or on account of their acceptance and execution of the trusts hereinbefore declared anything hereinbefore contained to the contrary thereof in anywise notwithstanding *In witness &c.*



No. CCCLXXI.

Declaration of Trust as to the Funds of a Charity.

No.
CCCLXXI.
*As to Charity
Funds.*

To all to whom these presents shall come A. B. of &c. a governor for life and also treasurer of and for the hospital of at and in the county of Middlesex C. D. of &c. also a governor for life of the said hospital and E. F. of &c. secretary and receiver of and for the said hospital send greeting *Whereas* the capital sums of £ Consolidated Bank Annuities and £ Reduced Bank Annuities the property of the said hospital by divers gifts legacies and investments have been this day transferred into the joint names of the said parties hereto and do now stand in their joint names in the proper books kept for those respective stocks at the Bank of England for the sole use and benefit of the said hospital *Now these presents witness* That they the said A. B. C. D. and E. F. do and each of them for himself severally and respectively and for their several and respective executors and administrators doth by these presents acknowledge testify and declare that as well the said two several capital sums as also all further and other capital sums which shall at any time or times hereafter be transferred into their joint names for the benefit of the said hospital and which shall be specified and set forth in the schedules thereof hereunder written shall be at all times hereafter deemed and taken to be the property of and belonging to the said hospital And that the same shall from time to time as the same shall be so transferred stand and remain in their joint names and be held by them together with all dividends interest and yearly or other income and proceeds thereof respectively arising therefrom *In trust* only and to and for the sole use and benefit and advantage of the said hospital and to and for no other use trust or purpose whatsoever but subject nevertheless at all times to the control order and discretion of the house committee for the time being or the major part of them in committee assembled [*or* “of the governors of the said hospital for the time being or the major part of them at any general court or assembly to be convened for that purpose”] either for the transfer or sale thereof respectively or of any part thereof respectively or otherwise as they shall direct order or appoint such order direction or appointment being made or entered in writing in their minutes and certified to them the said A. B. &c. or to the survivors or survivor of them their or his executors or administrators or to

Recital of in-
vestment in
trustees’
names.

Testatum.

Declaration of
trust.

Trusts.

Subject to
orders

for any ex-
change or
transfer.

No.
CCCLXXI.
*As to Charity
Funds.*

the trustees or trustee for the time being acting in the execution of the trusts hereby declared under the hand of the governor or chairman then presiding at that committee or general court or by the secretary for the time being *And* that they the said parties and the survivors and survivor of them their or his executors or administrators shall and will severally concur as the nature of the case shall require *And* do and shall after the sale of any of the said trust funds pay forthwith all monies received in respect of the same into the hands of the treasurer for the time being or lay out and invest the same or so much or any part thereof which shall be so ordered and directed as aforesaid in any other government fund or security as the said house committee [*or* "the general courts"] at the aforesaid or any other subsequent meeting by their like order in writing entered and certified in manner aforesaid shall or may direct and appoint and in the meantime and until such sale or transfer shall be so made as aforesaid *Upon trust* to pay to or to permit and suffer the treasurer for the time being of the said hospital or any other person or persons to be deputed or appointed by the said house committee [*or* "by the said general court"] from time to time and at all times as often as the same shall become due and payable to have receive and take the said dividends interest and proceeds of all the said trust monies to be by him or them paid applied or disposed of for or towards carrying on the designs of the said hospital in such manner as the said committee [*or* "court"] shall order and direct *And* from and immediately after any such transfer or sale shall have been done or effectuated as aforesaid and the produce arising therefrom shall have been laid out and invested in their joint names in any other government funds or securities in obedience to such order as aforesaid that then the said parties hereto and the survivors or survivor of them their or his executors or administrators shall and will sign all necessary acceptances thereof and also specify the same in some schedule thereof to be hereunder written *And* shall and will stand and be possessed of the whole amount thereof and of all dividends interest and proceeds thereof *Upon trust* in like manner as to the said trust monies or such part thereof as aforesaid as shall or may be sold and invested in any other funds or securities as aforesaid as also to such part thereof as shall or may be then remaining in their names in the funds hereinbefore mentioned and also to the dividends interest and proceeds arising or to arise therefrom

*As to the new
funds.*

respectively in such manner and upon such and the like trusts as are hereinbefore declared And subject at all times to the further order and direction of the said house committee [*or* "general court"] for the time being as aforesaid And it is hereby further declared by all the said parties hereto that in case any or either of them the said A. B. C. D. and E. F. or any other trustees or trustee to be appointed as hereinafter is mentioned shall be desirous of relinquishing the said trusts or in case any or either of them shall happen to die Then and in either of such cases and so soon as the said house committee [*or* "general court"] shall have nominated or appointed any other person or persons to become a trustee or trustees in their or any of their place or stead then the person or persons in whom the same trust monies stocks funds and securities shall be vested shall thereupon with all convenient speed transfer and assign the same in such manner and so as that the same may be legally and effectually vested in such new trustee or trustees jointly with the continuing trustee or trustees or solely as the case shall require upon the same trusts as are hereinbefore declared concerning the same or such of them as shall be then subsisting and capable of taking effect And it is hereby declared that every such trustee so to be appointed as aforesaid shall as well before as after the said trust premises shall have been so vested as aforesaid act or assist in the execution of the trusts of these presents as fully and effectually and shall have such and the same powers to all intents and purposes whatsoever as if he had been originally appointed a trustee and had been party to these presents [*A Clause for the indemnity of trustees is usually added, see ante, p. 830*] *In witness &c.*

No.
CCCLXXI.
*As to Charity
Funds.*

Appointment
of new trustees.

No. CCCLXXII.

Declaration of Trust as to Mortgage Money advanced on Mortgage by Trustees under a Marriage Settlement.

No.
CCCLXXII.
*As to Mortgage
Money.*

To all to whom &c. (Trustees) send greeting Whereas [recite marriage settlement and the mortgage] And whereas the said sum of £ so advanced by the said (T.) to the said (Mortgagor) was not the proper money of the said (T.) but was part of the trust monies which have come to their hands under and by virtue of the said in part recited indenture of settlement

Recitals.

No.
CCCLXXII.
*As to Mortgage
Money.*

Testatum.

That trustees
will stand
seised of trust
money upon
the trusts of the
settlement.

Now these Presents witness That the said (T.) do hereby acknowledge testify and declare that the said sum of £ so advanced by them the said (T.) as aforesaid on security of the hereditaments and premises mentioned and comprised in the said in part recited indenture of even date herewith was not the proper money of the said (T.) but the same was part of the trust money come to their hands under the said indenture of settlement and that the said (T.) and the survivor of them and the heirs executors and administrators of such survivor shall and will stand seised and possessed according to the nature and quality thereof respectively of the said hereditaments and premises mentioned and comprised in the said indenture of mortgage with their and every of their rights members and appurtenances and of the said principal sum of £ and the interest thereof thereby secured or expressed and intended so to be upon the trusts and to and for the several ends intents and purposes and by with under and subject to the several powers provisoes and declarations expressed and declared in and by the said in part recited indenture of settlement of and concerning the said sum of £ or trust funds of which the same formed a part or such of the same trusts ends purposes powers provisoes and declarations as are now subsisting and capable of taking effect
In witness &c.



No.
CCCLXXIII.
*Money secured
on a Term.*

No. CCCLXXIII.

*Declaration of Trust as to a Part of Mortgage Money secured
on a Term.*

Recital of
mortgage by
demise.

To all &c. C. D. of &c. sendeth greeting *Whereas* by an indenture of demise bearing date &c. and made between A. B. of &c. of the one part and the said C. D. of the other part the said A. B. in consideration of the sum of £ therein mentioned to be paid by the said C. D. did demise &c. *To hold* for a term of years subject to a proviso for cesser of the said term on payment by the said A. B. to the said C. D. of the said sum of £ with interest after the rate therein mentioned at the times and in manner therein expressed *Now these Presents witness* That he the said C. D. doth hereby acknowledge and declare that the sum of £ part of the said sum of £ so advanced to the said A. B. as

aforesaid is the proper money of the said E. F. of &c. and the sum of £ other part of the said sum of £ is the proper money of G. H. of &c. and therefore the said C. D. doth hereby declare and agree that he the said C. D. his executors and administrators shall and will from henceforth stand possessed of and interested in the said mortgage and mortgaged premises and every part thereof *In trust* as well for securing the payment of the said sum of £ and interest to the said E. F. his executors administrators or assigns as for securing the payment of the said sum of £ and interest to the said G. H. his executors administrators or assigns *And* the said C. D. shall not and will not assign or otherwise vacate the said mortgage or release the monies thereby secured until the said E. F. shall be fully paid and satisfied the said sum of £ and interest and the said G. H. shall also be fully paid and satisfied the said sum of £ and interest *In witness &c.*

No.
CCCLXXIII.
*Money secured
on a Term.*

—◆—

No. CCCLXXIV.

Declaration as to Using a Person's Name in a Bond.

To all &c. I I. K. of &c. send greeting *Whereas* by a certain bond or obligation &c. G. H. of &c. standeth bound to the said I. K. in the sum of £ conditioned for the payment of £ with interest for the same on the *Now these Presents witness* That the said I. K. doth hereby acknowledge and declare that the said sum of £ secured to be paid by the said obligor was and is all the proper money of I. C. of &c. and that his the said I. K.'s name is used in the said obligation in trust only for the benefit of him the said I. C. his executors administrators and assigns *In witness &c.*

No.
CCCLXXIV.
*As to Using
Name in a Bond.*
Recital of
bond.

DEEDS.

1. *Division of the Subject.*

I. NATURE OF DEEDS IN GENERAL.

2. *Definition of a Deed.*3. *Definition of a Deed.*
*Indenture.**Deed Poll.**Effect of an Indenture and Deed Poll.*4. *What is an original Deed.**What a Counterpart.**Scamp on Duplication.*5. *Deed a Common Assurance.*

II. REQUISITES OF A DEED.

6. *Incidents to a Deed.**Other Matters.*1. *Writing.*7. *On Paper or Parchment.*2. *Party able to contract.*8. *Persons in general.*3. *Party to be contracted with.*9. *General Rule.*4. *A Thing to be contracted for.*10. *Things in general.*5. *Apt Words.*11. *What are Apt Words.*6. *Execution of Deeds.*12. *Sealing an important Requisite.*13. *How to be performed.*14. *Signing a Deed, when necessary.*15. *Delivery of a Deed.*16. *Mode of Delivery.**Eserow.*17. *No Delivery twice.*18. *Delivery not necessary, when.*19. *By whom a Deed may be executed.**Executing Deeds by Attorney.**By one Partner for the Firm.**Reading and Deed.*20. *Attestation necessary, when.*

III. FORMAL PARTS OF A DEED.

21. *Enumeration of the Parts.*22. *Use of the respective Parts.*1. *The Premises.*23. *What comprehended under the Premises.*1st. *The Date.*24. *Use of the Date.**Impossible or false Date.**Time, how computed.**In what part of Deed.*2nd. *Name and Description of Parties.*25. *How Parties must be named.*3rd. *The Recitals.*26. *Use of the Recitals.*4th. *The Consideration.*27. *Consideration to be expressed.*5th. *The Granting Part and Operative Words.*28. *What comprehended under the Granting Part.*6th. *The Parcels.*29. *Parcels to be accurately described.*7th. *The Exception and Reservation.*30. *Distinction between an Exception and a Reservation.*

2. *The Habendum*

31. *Former Use of the Tenendum
Office of the Habendum
To explain the Premises*

3. *The Reddendum*

32. *Definition of the Reddendum
Requisites of a Reservation*

4. *Conditions*

33. *Definition of a Condition*
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Division of the subject.

SECT. 1. The subject of deeds may be considered under the following heads :

1. Nature of deeds in general ; 2. Requisites of a deed ; 3. Formal parts of a deed ; 4. Where a deed is necessary or otherwise ; 5. Construction of deeds ; 6. Avoiding of deeds ; 7. Proof of deeds ; 8. Admission of parol evidence as to deeds ; 9. Possession of deeds ; 10.

Stamp duty on deeds; 11. General regulations as to stamping deeds.
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Deeds.

I. NATURE OF DEEDS IN GENERAL.

2. A deed, in the understanding of the law, is an instrument in writing, signed, sealed and delivered, to prove the agreement of the parties to the things therein contained, by which it is distinguished from writings not under seal; agreements of this latter kind being called “parol agreements,” and those by deed, “contracts by specialty.” See *ante*, p. 78, pl. 4.

Definition of a deed.

3. Deeds, as to their form, are either indentures or deeds poll. An indenture is a deed indented or toothed, *i. e.* cut uneven at the top of the paper or parchment, *instar dentum*, 1 Inst. 143 b; a deed poll, on the other hand, is that which is shaved even at the top, a distinction, which was formerly deemed of more importance than it is at present, except so far as an indenture is rendered necessary by the 27 Hen. 8, c. 16, in the case of bargains and sales inrolled, and by the 32 Hen. 8, c. 28, in the case of certain leases. A conveyance of lands and hereditaments, or any interest in them, to charitable uses, is required to be by an indenture, 9 Geo. 2, c. 36, s. 1. They are, likewise, still distinguished from each other, in as much as an indenture is a deed *inter partes*, commencing with the words “This indenture made, &c., between, &c.,” and the deed poll is made by one person or several persons, commencing thus, “Know all men by these presents, &c.,” or “To all to whom these presents shall come, &c.” The effect of an indenture is to bar or conclude all parties to say or except against any thing contained in the deed; but the effect of the deed poll is to bind the person only by whom the same is made, as feoffor, grantor, &c., 1 Inst. 143. Before the passing of the Act 7 & 8 Vict. c. 76, no person, unless named as a party to an indenture, could take any immediate interest or benefit under such indenture. By the 11th section of that act it was enacted that it should not be necessary in any case to have a deed indented; and that any person, not being a party to any deed, might take an immediate benefit under it in the same manner as he might under a deed poll. By the Act 8 & 9 Vict. c. 106, the Act of 7 & 8 Vict. c. 76, was repealed; and by sect. 5 of the said Act of 8 & 9 Vict. c. 106, it was enacted, “That under an indenture executed after the 1st day of October, 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named as a party to the same indenture;” also, that a deed executed after the said 1st day of October, 1845, purporting to be an indenture, shall have the effect of an indenture, although not actually indented.

Different kinds of deeds.

Indenture.

Deed poll.

Effect of an indenture and deed poll.

4. Where several parts of the indenture are executed by the parties, that which is executed by the grantor is termed the *original*, in distinction from the other parts, which are termed *copies*. What is an original deed.

<i>Deeds.</i>	tion from the other parts, which are termed <i>counterparts</i> or duplicates.
What a counterpart.	The execution of counterparts of leases is generally required to the due execution of powers to grant leases given by deeds or wills, or by act of parliament, 19 & 20 Vict. c. 120, s. 32; 21 & 22 Vict. c. 44, s. 10; 5 & 6 Vict. c. 108, s. 1. It seems when a leasing power requires that the lessee shall execute a counterpart, it is not necessary that the execution of the lease and of the counterpart should be contemporaneous, <i>Fryer v. Coombs</i> , 11 Ad. & Ell. 403.
Stamp on duplicates.	The 13 & 14 Vict. c. 97, provides for the payment of stamp duty on the duplicate or counterpart of any deed or instrument whatever chargeable with stamp duties by that act or any other act then in force. The counterparts of a lease not executed by the lessor do not require a denoting stamp, 16 & 17 Vict. c. 59, s. 12. See <i>post</i> , LEASES.
Deed a common assurance.	5. A deed, as an evidence of a transfer of real property, has been denominated a common assurance, because thereby a man's property is assured to him so as to prevent dispute; it has also been called a deed <i>in pais</i> , <i>i. e.</i> in the country, being a transaction between private parties on the spot, or more properly, out of court, to distinguish it from assurances by matters of record, by acts of parliament, or by special custom, 2 Bl. Comm. 294. But the term "deed" is applied not only to such instruments as serve to convey, but also to such as serve to defeat or discharge an estate, or simply to give an authority without any beneficial interest.

II. REQUISITES OF A DEED.

Incidents to a deed.	6. The incidents essential to the validity of a deed, are—1. Writing; 2. A person able to contract; 3. A person able to be contracted with; 4. A thing to be contracted for; 5. Apt words; 6. Execution of deeds; 7. Reading.
Other matters.	To these may be added registering and inrolling, which are rendered necessary by statute in certain cases.

1. Writing.

On paper or parchment.	7. A deed must also be written or printed on paper or parchment, 1 Inst. 299 a; 2 Bl. Comm. 297; wood, stone or linen are held not fit for the purpose, 2 Bl. Comm. 297; but there may be and frequently are several deeds upon the same piece of parchment; which occurs where one deed is endorsed upon another. The writing of deeds is without punctuation, but the Courts in construing them must read them with such stops and marks of parenthesis as will give effect to the whole; <i>Doe v. Martin</i> , 4 T. R. 65, 66. Marks of parenthesis are indeed usually inserted, but it seems that they are to be regarded, in the construction of the deed, only when they are consonant with the sense, and required by the context; 3 Atk. 9, 10; 1 Mer. 651.
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2. Party able to contract.

Persons in general.	8. All persons not under any positive disability may execute deeds, but although an infant may bind himself by simple contract for neces-
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saries, yet he cannot bind himself by a bond, and a letter of attorney by an infant or married woman is absolutely void, *Wittingham's case*, 8 Co. 43; *Graham v. Jackson*, 6 Q. B. 811; but in other cases it appears that deeds by infants are voidable only, not absolutely void. A deed which takes effect by delivery, and is executed by an infant, is voidable only, and not void, and *Zouch v. Parsons*, 3 Burr. 1794, is sound law. A voidable deed is valid until some act is done to avoid it; and it lies upon those who claim in opposition to the deed to show that such act has been done, *Allen v. Allen*, 2 Dru. & W. 307; 1 Con. & L. 427. See 2 Prest. Conv. 248—250. Sir E. Sugden said that he always rejected a title which was to depend on the act of an infant, for at best the deed would be voidable. *Zouch v. Parsons*, *ub. sup.*, is no authority for saying that a good title can be made through a conveyance by an infant, but it is a totally different thing to say that case as a decision is not sound law, *Allen v. Allen*, 2 Dru. & W. 339. A married woman is able, with the concurrence of her husband by deed duly acknowledged, to dispose of and release any interest in land, whether the property be in possession or reversion, 3 & 4 Will. 4, c. 74, ss. 77—79. See Shelford's Real Prop. Stat. 377—408. And so far as property is settled to her *separate use*, without any clause against anticipation, she is able in equity to dispose of it in any manner she may think proper, independently of her husband as if she were a *feme sole*. As to her power to dispose of reversionary interests in personal estate, see *ante*, pp. 415, 416. A married woman may execute a naked authority, and a power to dispose of real and personal estates is frequently given to married women by means of a conveyance to uses or upon trusts to be executed notwithstanding coverture, and without their husband's concurrence.

3. *Party to be contracted with.*

9. As a rule, whoever is capable of being a grantor may also be a grantee, but a deed may be executed to or in favour of an infant, even though he be unborn, or as it is termed *en ventre sa mère*, *Long v. Blackall*, 7 T. R. 100; *Millar v. Turner*, 1 Ves. sen. 85; but a person not *in esse*, at the time of the gift or grant, as the first born of J. S. and the like, cannot take as first grantee; but a conveyance may be made to one to the use of an unborn child, 2 Prest. Conv. 475. A conveyance to a woman during her coverture will be good, until it is avoided by her husband; although after his death she may herself disagree to it, Co. Litt. 3 a, 51. General rule.

4. *A Thing to be contracted for.*

10. The thing or subject-matter to be contracted for must be clearly expressed, and may include almost every estate and interest in real and personal property, whether in possession, remainder, or reversion, Things in general.

Requisites.

except such things the alienation of which is expressly prohibited by statute or is contrary to the common law or public policy, see *ante*, ASSIGNMENTS, pp. 346, 347.

What are apt words.

5. *Apt Words.*

11. By apt words is to be understood not only such technical words as the law requires to create particular estates, but also such a form of words as will enable a court or jury to discover the meaning of the parties, *Lord Clanricarde's case*, Hob. 277; 1 Inst. 35 b; for want of which a deed may be void for uncertainty, as if a grant be made to two of the sons of J. S. and he has many sons, *Shep. Touch.* 236, 237.

Sealing an important requisite.

6. *Execution of Deeds.*

12. Under this head may be considered—1st. Sealing; 2nd. Signing; 3rd. Delivery; 4th. By whom to be performed; 5th. Attestation.

How to be performed.

13. [1st. *Sealing.*] This is the most important requisite of a deed, without which an instrument cannot be called a deed; but it is not necessary that there should be a separate piece of wax for each party named in the deed, provided each puts his seal upon the same piece; and it is not necessary that the seal should belong to the party who puts it to the instrument, and if he seal with a stick or any thing which will make a print, it is good, *Shep. Touch.* 57; and see *Sprange v. Barnard*, 2 Br. C. C. 585, where affixing a stamp was held to be equivalent to sealing; so a corporation may seal with any other seal besides their common seal, *Perk. sect.* 133. And so it seems that a person may also adopt the seal which has been affixed by another, and make it as effectual as if it had been affixed by himself, *Perk. ub. sup.*; but the sealing a deed should take place before it is delivered, otherwise it is not good, *Shep. Touch.* 57.

One piece of wax may serve as the seal of several persons, if each of them impresses it himself, or one for all by proper authority, *Balt v. Dunsterville*, 4 T. R. 313; *Lord Lovelace's case*, W. Jones, 268; *Shep. Touch.* 57; but then it must appear by the deed and profess to be the seal of each, and if it professes to be the seal of a corporation and not of individuals it cannot be taken as the seal of the latter, *Cooch v. Goodman*, 2 Q. B. 598.

Signing a deed, when necessary.

14. [2nd. *Signing.*] This is not absolutely necessary to the validity of a deed, but for the purposes of evidence, *Shep. Touch.* by Prest. 56. It is the universal practice in modern times for deeds to be signed. If an instrument in execution of a power is required to be signed under the hand of the party, it will not be valid without signature, and if the signature, &c., require to be attested, those facts must be stated in attestation, to be signed by the witnesses, *Birde v. Strode*, cited *Bridgman*, 21; *Thayer v. Thayer*, Palm. 112; *Blockville v.*

Ascot, 2 Eq. Cas. Abr. 659; *M^cQueen v. Farquhar*, 11 Ves. 467; *Wright v. Wakeford*, 17 Ves. 434; 4 Taunt. 213; *Doe v. Peach*, 2 Maule & S. 576. Execution.

Where the attestation of a deed is in the usual form, and the attesting witness recollects seeing the party sign the deed, but does not recollect any other form being gone through, it will be for the jury to say on the evidence, whether the deed was not duly signed, sealed, and delivered, as all that is very likely to have occurred, though the witness did not remember it, *Burling v. Paterson*, 9 Car. & P. 570.

15. [3rd. *Delivery.*] This is as indispensable as sealing, for if a deed be sufficiently written in my name, and sealed, but not delivered by me, or by another by my assent, the same shall not bind me, Perk. sect. 137; therefore where two were jointly bound in a bond, and it appeared that one of the obligors did not deliver the same, it was held that it was the bond of the one only that signed it, *Cloud v. Nicholson*, 8 Mod. 242. Delivery of a deed.

16. The usual and proper way of delivering a deed, is for the party executing the same to take it up immediately after taking off the seal, and to say, "I deliver this as my act and deed," Shep. Touch. 58. No particular form of words are necessary, "here take it," or "this will serve you," and the like, have been held sufficient, Shep. Touch. *ub. sup.*; and there may be a delivery without words, as if an obligor throws a deed towards the obligee, without saying anything, and the latter takes it up immediately, that is a delivery, *Chamberlaine v. Staunton*, Ow. 95; S. C. Cro. Eliz. 122; 1 Leon. 140; but if it be simply laid upon the table, without being offered to the party, it is not a delivery, *ib.*; so there may be words without any act of delivery, and it will be good, *Gibson v. Tenant*, Bendl. 140; S. C. N. Bendl. 92; Dy. 192; so there may be a delivery either to the party himself, or to some person on his behalf, but if made to a stranger without a declaration, it will not be sufficient, Shep. Touch. *ub. sup.* Mode of delivery.

The delivery of a writing as an *escrow* is where the maker of the writing seals and delivers it unto a stranger until certain conditions be performed, and then to be delivered to the party in whose favour the writing is made, to take effect as a deed. In the delivery of a writing as an escrow, attention must be paid to two things: first, that the form of words used in the delivery be apt and proper, as, I deliver this writing to you as an escrow to deliver it to the party as my deed, upon condition that he do pay to you 20*l.* for me, or upon condition that he deliver up the old bond he hath of mine for the same money or as the case may be, Shep. Touch. 58. This mode of delivery should be noticed in the attestation as follows:—"This writing was delivered by the within Escrow.

Execution.

named A. to B., to be by him delivered as the act and deed of the said A., if the sum of £ shall be paid by C., of &c., at or in on the day of .” See *ante*, No. CCXCV., p. 584. Second, the delivery of a writing as an escrow must be to a stranger, for if it is delivered to the party to whom it is made, as an escrow, upon certain conditions, the delivery is absolute, and the deed will take effect immediately without any obligation on the party to perform the conditions, *Shep. Touch.* 59; *Co. Litt.* 36 a; 2 *Rep.* 137 a. See *Vin. Abr. Fait.* (M.)

It was observed by Parke, B., *Bowker v. Burdekin*, 11 M. & W. 147, “In order to constitute the delivery of a writing as an escrow, it is not necessary it should be done by express words, but you are to look at all the facts attending the execution, to all that took place at the time, and to the result of the transaction; and, therefore, though it is in form an absolute delivery, if it can be inferred that it was delivered not to take effect as a deed till a certain condition was performed, it will nevertheless operate as an escrow.” That is the result of the cases, *Johnson v. Baker*, 4 B. & Ald. 440; *Murray v. Earl of Stair*, 2 B. & C. 82; *Nash v. Flynn*, 1 Jones & L. 175. In *Christie v. Winnington*, 8 Exch. 290, Pollock, C. B., said, “I lay no stress upon the express use of the words ‘I deliver this as an escrow,’ for if, in point of fact, it is delivered not to take effect as a deed until some condition is performed, it will operate as an escrow, notwithstanding the delivery is in form absolute.” See *Gudgen v. Besset*, 6 Ell. & Bl. 986; 3 Jur., N. S. 212; 26 L. J., Q. B. 36; *Cumberlege v. Lawson*, 1 C. B., N. S. 709; 26 L. J., C. P. 120.

A writing delivered as an escrow has no force until the conditions shall be performed, although the party to whom it is made should obtain possession of it before the condition has been performed, yet he can derive no benefit from it. But when the conditions have been performed, and the deed delivered over, then the deed shall be as effectual as if it had been delivered immediately to the party to whom it is made, and no act can then prevent this effect, *Shep. Touch.* 59; 3 *Rep.* 35. It seems that if either of the parties to the deed die before the performance of the conditions, which are afterwards performed, that the deed is good, for there was *traditio inchoata* in the lifetime of the parties, *et postea consummata existens* by the performance of the conditions, *Shep. Touch.* 59; *Peryman's case*, 5 *Rep.* 846. A bond delivered to a third person, to be delivered to the obligee on the performance of certain conditions, was held to take effect upon its performance from the original sealing and delivery, though the obligor and obligee were both dead, *Graham v. Graham*, 1 Ves. jun. 275.

If the vendor of a leasehold estate delivers the conveyance as an escrow, to take effect on payment of the residue of the purchase-money the property in the title-deeds of the estate is so vested in the vendee,

that the vendor, obtaining possession of them, and pawning them, confers on the pawnee no right to detain them after tender of the residue of the purchase-money, for the deeds were deposited by a person who had obtained them by fraud, *Hooper v. Ramsbottom*, 6 Taunt. 12; 1 Marsh. 414.

Execution.

17. A deed cannot be delivered twice; for if the first delivery have any effect, the second will be void; therefore if an infant, or a person under duress, deliver a deed (in which case the deed is not void but voidable only), and after the disability is removed he deliver it again, this second delivery will be void, *Shep. Touch.* 60; but where a feme covert seals and delivers a deed, and after her husband's death delivers it again, the second delivery is good, because the first was void, *Goodright v. Straphan*, 1 Cowp. 201.

No delivery twice.

18. In the case of her Majesty's letters-patent, or grants under the seal of the Duchy of Lancaster, the seal is matter of record, and therefore the deed needs no delivery; so the deeds of a corporation, to which their seal is affixed, need not as a rule be delivered, *Willis v. Jermin*, Cro. Eliz. 167.

Delivery not necessary, when.

19. [4th. *By whom a Deed may be executed.*] A deed may be executed by the parties in person or by attorney; but in the latter case it must be executed in the name and delivered as the act and deed of him who gives the authority, *Coombe's case*, 9 Co. 76; *Hawkins v. Kemp*, 3 East, 410; *D'Abridgecourt v. Ashley*, Moore, 818; *Frontin v. Small*, 2 Ld. Raym. 1418; *S. C.* 1 Str. 705; *White v. Cuyler*, 6 T. R. 177. See *ante*, p. 428. Where a deed is to take effect solely in execution of a power, execution by attorney is wholly void (unless authorized by the power) as a mere power cannot be delegated to another. *Coombe's case*, 9 Rep. 75; *Hawkins v. Kemp*, 3 East, 410. Thus, persons who have power or authority to sell, or to lease, or to consent to a revocation of uses, although no discretion is given, cannot, unless there be a special provision for the purpose, execute a deed by attorney, 3 Prest. Abstr. 67; 1 *Ib.* 293. In short, an attorney cannot be appointed to do an act which is *personal* to the person who assumes to give the authority, *Ib.* A purchaser is not bound to accept a conveyance by attorney, *Mitchel v. Neal*, 2 Ves. sen. 679; *Richards v. Barton*, 1 Esp. 89; *Noel v. Weston*, 6 Madd. 50, but may require it to be executed by the party in person, for it tends to multiply his proofs, for the letter of attorney may be lost and the party is obliged to prove the execution of it, *Johnson v. Mason*, 1 Esp. 89; *Eaton v. Sanxter*, 6 Sim. 519. It is said that a power of attorney given by deed may be revoked without a deed, *Rex v. Wait*, 11 Price, 508. Another objection is, that the vendor may be dead at the time the deed is executed under the power; in which case the execution will be void, as a power of this kind ceases by the death of the principal, Sugd. V. & P. p. 693, 11th ed. Where the neces-

Executing deeds by attorney.

Execution.

sary parties to a conveyance reside abroad it is often advisable, instead of sending a power of attorney to send the deed itself for execution, or for such parties to execute a conveyance of the estates to trustees upon trusts, enabling them to do all such acts as it was intended they should do under the power of attorney, 3 Prest. Abstr. 66. As to stamping deeds executed abroad, see 13 & 14 Vict. c. 97, s. 13, *post*. No particular form of words is necessary, so that it be expressed that it is executed for and in the name of the principal, as “for J. B. (principal) M. W. (attorney),” *Wilks v. Back*, 2 East, 142. The execution of an indenture by an attorney must be in the name of the principal, in order to bind the latter, and the power of attorney as well as the deed itself must be under seal, *Berkeley v. Hardy*, 5 B. & C. 355; 8 D. & R. 102. See 3 Prest. on Abstr. 67, 68. It is essentially necessary that the principal should be named in the deed as the party, *Frontin v. Small*, 2 Ld. Raym. 1418; 1 Str. 705.

By one partner
for the firm.

Although one partner may bind the rest by executing any instrument not under seal, as a bill of exchange, yet it is otherwise in regard to a deed. One partner has no implied authority to bind his copartner by deed, *Harrison v. Jackson*, 7 T. R. 207. However, if one partner executes a deed on behalf of the firm, in the presence and with the consent of his copartners, that will bind the firm; in such a case the sealing and delivery by one is deemed to be the act of all, *Ball v. Dunsterville*, 4 T. R. 313; *Burn v. Burn*, 3 Ves. 573. See *Burton v. Burton*, 1 Chitt. 707. As to warrant of attorney, see Coll. on Partn. Ch. II. s. 1, *ante*, p. 563.

Reading over.

The deed of a blind or unlettered man ought to be truly read to him, and if it be misread it will not bind him, *Pigot's case*, 11 Rep. 27 b, 28 a, Shep. Touch. 71. If a party to a deed can read but omits to do so, or being an illiterate or blind man does not require to hear the deed to be read, or the contents thereof to be explained, although the deed be contrary to his intention, it is valid at law, Shep. Touch. 56; *Manser's case*, 2 Co. 3. If an ignorant person be induced to execute an instrument, supposing it to operate in one way, and it really operates in another, such instrument is invalid, *Doe d. Lloyd v. Bennett*, 8 Car. & P. 124.

Attestation necessary, when.

20. [5th. *Attestation*.] This formality, like that of signing, is necessary for the purpose of authentication, and was formerly an important part of the solemnity of execution, but it forms no part of the essence of a deed, except where expressly required by acts of parliament, or under powers of appointment and the like. See *ante*, p. 427.

III. FORMAL PARTS OF A DEED.

Enumeration of
the parts.

21. The formal or orderly parts of a deed are usually considered to be seven in number, namely—1. The premises; 2. The *habendum* and

tenendum ; 3. The exceptions and reservations ; 4. The *reddendum* ; *Formal Parts.*
5. The conditions ; 6. The covenants ; 7. The conclusion.

22. These parts of a deed are not necessary to the essence thereof, and a deed may be good without premises, *habendum, tenendum, reddendum*, clause of warranty, date or attestation, *Shep. Touch. 75* ; but, says Lord Coke, “ No well-advised man will trust to such deeds, which the law by construction maketh good *ut res magis valeat* ; but when form and substance combine, then is the deed fair and absolutely good.” Use of the respective parts.

1. *The Premises.*

23. The premises comprehend every thing prior to the *habendum*, and consist of—1st. The date ; 2nd. The names and descriptions of the parties ; 3rd. The recitals ; 4th. The consideration and acknowledgment of the receipt thereof ; 5th. The grant or granting part ; 6th. The parcels or things granted ; 7th. The exceptions and reservations ; 8th. The general words. What comprehended under the premises.

24. [1st. *The Date.*] This has never been deemed absolutely essential, and in former times was frequently omitted, but now it is held, for obvious reasons, to be of such importance that it never would be purposely omitted ; yet a deed will not be invalidated although it mention no date, or an impossible date, as the 30th of *February*, provided the real day of its being dated or given can be shown, *Perk. sect. 120* ; *Dodson v. Kayes*, *Yelv. 193* ; *Shep. Touch. 55* ; and if it bears a false date, the time of the actual execution may be shown, *Ford v. Grey*, 6 *Mod. 45* ; *Schumann v. Weatherhead*. 1 *East, 540*. But a party pleading a deed without date, or with an impossible date, must state the time of its delivery, *Ib.* ; *Dodson v. Kayes*, *Yelv. 193*. The date is not conclusive, but the time of actual execution may be shown either by the party setting up or resisting the deed, *Lord Saye and Sele's case*, 10 *Mod. 40*. And a deed may be pleaded as bearing date on one day and as having been delivered on a different day, *House v. Loxton*, *Cro. Eliz. 890* ; *Stone v. Bale*, 3 *Lev. 348* ; *Com. Dig. Fait (B. 3)*. Where a deed purported to bear date on the 20th of November, and was executed by one of two defendants on the 16th of that month, and by the other on a previous day, it was held to be immaterial, it not appearing that a blank was left for the date at the time of the execution, *Cockell v. Gray*, 6 *Moore, 482*. If the date of the deed was not inserted when it was executed, it might be a material alteration if the instrument were only to operate from the day of the date, *Ib.* Under the Statute of Inrolments time will be computed from the delivery, *Norris v. Gawnbry*, *Hob. 139* ; see also *Moor. 40*, pl. 128 ; or in the case of an award it may be computed from the time of making, *Armitt v. Breame*, 1 *Salk. 76*. Use of the date.

Where, by a deed made on the 29th of August, 1832 (being Leap-

Impossible or false date.

Time, how computed.

Formal Parts.

year), the plaintiff covenanted to pay a sum of money, with interest, on the 29th of February next ensuing, the words "29th of February then next" were construed to mean the 29th of February in the next Leap-year, *Chapman v. Beecham*, 3 Gale & D. 71.

A deed may be dated or executed on a Sunday, the stat. 29 Car. II. c. 7, for the better observance of the Lord's day not applying to the private transactions of individuals as between themselves by way of conveyance, *Drury v. Defontaine*, 1 Taunt. 131; 2 Prest. Conv. 362.

If two deeds, bearing date the same day, are evidently but one agreement, that shall be presumed to be executed first which will support the clear intent of the parties, *Taylor v. Horde*, 1 Burr. 106. A lease and release in the same deed may be supported on the presumption that the lease was first executed, *Parker v. Keate*, Freem. 250; *Cromwell's case*, 2 Co. 74, 75. So the time of the execution of the lease may be shown to prove that the lease was delivered after the day of the date, so as to be the lease of a present, and not a reversionary, interest, *Doe v. Day*, 10 East, 427.

In what part
of deed.

In indentures the date is always placed at the beginning, in this form:—This indenture made the day of in the year of our Lord 18 and the clause *In witness* at the end of the deed contains a reference to it in the words "In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written." In deeds poll the date is placed at the end in the witness clause; and in wills the date is likewise placed at the end. In agreements the date is generally placed at the beginning, as in an indenture, but occasionally at the end.

How parties
must be named.

25. [2nd. *Name and Description of Parties.*] All persons having any legal or equitable estate or interest in the subject matter of the deed must be parties, otherwise their estates or interests will not be affected by it. And all those who are intended to take an *immediate* interest under an indenture ought to be named as parties. A person may take an estate in remainder under a deed to which he is not a party, Co. Litt. 230 b, 231 a; Vin. Abr. *Faits* (C. a.) Before the stat. 8 & 9 Vict. c. 106, s. 5, no one could take an immediate estate by an indenture unless he was a party to it, *Green v. Edwards*, 1 And. 258; 1 Leon. 287, 288; 2 Leon. 1; 3 Leon. 34. By the 8 & 9 Vict. c. 106, s. 5, under an indenture executed *after* 1st of October, 1845, an immediate estate or interest in any tenements or hereditaments may be taken, although the taker thereof be not named a *party* to the same indenture. Regularly the name of the grantor or grantee ought to be sufficiently set forth so as to distinguish them from others, but a mistake in the name will not vitiate the deed where there are sufficient marks of distinction, Perk. 36; and a name may be acquired by reputation, which will be good enough to ascer-

tain the identity of the person, 1 Inst. 3; so it seems that a person who executes a deed may be bound by it though his name be not mentioned therein, as where the deed was written in the third person, thus, "it is agreed, &c.," *Nurse v. Frampton*, 1 Salk. 214; so if a father executes the indentures of apprenticeship of his son, he will be bound by the contents, though not named therein for that purpose, *Branch v. Ewington*, 2 Dougl. 518.

26. [3rd. *The Recitals*.] A recital in a deed, like the preamble of an act of parliament, has been held to be the key to what comes after, *Moore v. Magrath*, Cowp. 12.

A recital is a narrative of such facts, deeds or agreements, as are necessary to explain the title or interests of the parties, and the motives and reasons upon which the deed is founded. In many transactions recitals are not absolutely necessary, but in general they are necessary for the purpose of showing the origin and derivation of the title, or of stating such facts as are connected with, or relate to, the subject matter of the deed. The office of a recital is sometimes extremely useful with a view to the construction of a deed. If a deed contains an expression which is ambiguous, the recital may be referred to, in order to determine in which of two senses a provision in the deed was meant to be used.

Where the words in the operative part of a deed of conveyance are clear and unambiguous, they cannot be controlled by the recitals or other parts of the deed. But where those words are of doubtful meaning, the recitals or other parts of the deed may be used as a test to discover the intention of the parties, and to fix the meaning of those words, *Walsh v. Trevanion*, 14 Jur. 1134; 19 L. J., Q. B. 458; 15 Q. B. 733; 16 Sim. 178; *Holliday v. Overton*, 14 Beav. 467; *Bailey v. Lloyd*, 5 Russ. 330; *Ingleby v. Swift*, 10 Bing. 84.

If there is in a deed a clear description of particular property, notwithstanding a contradictory recital, the construction is taken most strongly against the grantor, upon his own deed, and there being a doubt whether the recital or the operative part of the conveyance is wrong, the two being clearly contradictory, the operative part, which indicates an intention to convey the greater portion, is to stand, notwithstanding the recital would lead to a contrary conclusion, *Rooke v. Lord Kensington*, 2 Kay & J. 769. This proposition is somewhat opposed to the case of *Moore v. Magrath*, Cowp. 9; but in that case it is to be observed that there was no declaration of the uses of the estate sought to be brought within the operation of general words, contradictory to the recital. V. C. Wood, after laying down the above proposition, observed, "In releases, for instance, upon which this question occurs much more frequently than in conveyances where there are general words amply sufficient to cover everything, it has been long settled that the recitals clearly restrict the release; but as an

Formal Parts.

Use of the recital.

Recitals.

When recital will not control operative part.

Formal Parts.

illustration of the rule, if in that case the recitals expressed an intention to do certain things, and the releasing part did not merely release in general terms, but released a particular debt or action not comprised in the recital, V. C. Wood apprehended that could not be limited or controlled by the recital, but that general words may be so controlled," *Rooke v. Lord Kensington*, 2 Kay & J. 769, *per* Wood, V. C.; see *Alexander v. Crosbie*, Lloyd & G. temp. Sugd. 145.

In the celebrated case of *Cholmondeley v. Clinton*, 2 Mer. 171; 2 Jac. & Walk. 1; 2 B. & Ald. 625; 4 Bligh, 1, the effect of a recital in controlling the legal effect of a limitation in the operative part of a deed, was the subject of much discussion, and upon which different opinions were expressed by the judges. The case was ultimately determined by the House of Lords upon another point.

Where the operative part (which was not by way of present conveyance, but by way of covenant), appeared to be intended to follow, but did not accurately follow the words of a recital, the effect of the operative part will be limited to the extent pointed out by the recitals, *In re Neal*, 4 Jur., N. S. 6. A marriage settlement recited the treaty to be to settle all property which may come to the wife from H. by will or codicil or codicils or otherwise. The husband subsequently covenanted to settle all property which thereafter might come to the wife by any will or codicil or codicils of H. or otherwise, it was held, that a gift to the wife by the will of one of the trustees of this marriage settlement (not being H.), was not bound by this covenant, and that the covenant only bound the husband to settle such property as should be derived by the wife from H., *Ib.*

Recital when
an estoppel.

Where a recital is intended to be a statement which all the parties have mutually agreed to admit as true, it is an estoppel upon all. But when it is intended to be the statement of one party only, the estoppel is confined to that party, and the intention is gathered from construing the instrument, *Stroughill v. Buck*, 14 Q. B. 787, *per* Patteson. Where it can be collected from the deed that the parties to it have agreed upon a certain admitted state of facts, as the basis on which they contract, the statement of those facts, though but in the way of recital, will estop the parties to aver the contrary, *Lainson v. Tremere*, 1 Ad. & E. 792; *Bowman v. Taylor*, 2 Ad. & E. 278; *Carpenter v. Buller*, 8 M. & W. 209; *Young v. Raincock*, 7 C. B. 310.

A party to a deed of conveyance is not estopped by recitals contained in other deeds, through which the title so conveyed is derived, *Doe d. Shelton v. Shelton*, 4 Nev. & M. 857; 3 Ad. & E. 265. If a man executes a deed, in which a former deed is recited, to which he is a party, but which he has not executed, he does thereby bind himself by all the conditions of the former deed in the same manner as if that also had been executed by him, *Ib.* No more of a deed is

proved by the recital of it in another deed, than is actually stated in such recital, *Gillett v. Abbott*, 7 Ad. & E. 783. Formal Parts.

A recital will not be evidence *for* the party making it, though it may be so against him. Where a party to a conveyance is therein described as heir-at-law of J. P., a surviving devisee of the legal estate, such description is not evidence of the prior death of the co-devisees, or that such party is heir of J. P., even against another party who executed the conveyance, *Doe d. Pritchard v. Dodd*, 2 Nev. & M. 838.

In releases of claims recitals can never be properly dispensed with, so long as the present rule of equity prevails, that a release of claims, however generally expressed, only extends to claims of which the releasor is cognizant; for it is a necessary result of this rule, that a well-prepared release shall on its face precisely show the claims intended to be released, and this can only be conveniently done by its recitals, 1 Davidson's Conv. 45, 2nd ed. Recitals necessary in release of claims.

Where there is a particular recital in a deed, and general words of release are afterwards inserted, the generality of the words shall be qualified by the previous recital, *Thorpe v. Thorpe*, 1 Ld. Raym. 235; *Knight v. Cole*, 3 Lev. 273; 2 Roll. Ab. 409; Bac. Abr. Release (K.); *Payler v. Homersham*, 4 Maule & S. 423; *Solly v. Forbes*, 2 Brod. & B. 38; 4 Moore, 448; *Lampon v. Corke*, 5 B. & Ald. 606; *Simons v. Moore*, 3 B. & Ad. 175; *Poulson v. Wellington*, 2 P. Wms. 434.

A release by the next of kin of an intestate to his administrator, though unlimited in its terms, was held, from the recitals and context, to operate only as to a particular sum mentioned in the recitals, and not to include funds which afterwards fell into the intestate's estate, *Lindo v. Lindo*, 1 Beav. 496.

Although the general words in a deed, taken by themselves, would be sufficient to pass the whole interest which the party has to convey, yet, where it is clear that these words were used, and understood by all the parties to the deed, only in subservience to a particular purpose, as to release a portion charged on the estate, they will not be held to have an effect beyond the particular purpose so intended, *Farewell v. Coker*, 2 Mer. 353; 2 Jac. & W. 192.

Great care should be taken in making the recitals correct, for a mistake may render the deed inoperative. Thus, if a man having a lease dated the *first* of January, 1840, should recite it as dated the *second* of January, 1840, and then assign all the lands demised by the *before* recited indenture, the assignment would be void in law, though equity, in favour of a purchaser, would correct the mistake. To avoid the injurious effect of errors in the recital of dates, it is a common practice in conveyancing, to recite deeds as bearing *date on or about* a particular day, so as to render the deed evidence in sup- Words "on or about."

- Formal Parts.** port of the title, though the date be mistaken, Shep. Touch. by Prest. 76, 77; 1 Prest. Abstr. 60. In more recent times it has been the practice not to add the words *on or about* a given date invariably, but still cases may occur similar to that above mentioned, in which the omission of those words would be prejudicial.
- Consideration to be expressed.** 27. [4th. *Consideration.*] The consideration for a deed ought to be stated, although a deed cannot be impeached by merely showing that it was made without any consideration, unless proof be given that it originated in fraud, *Wallis v. Day*, 2 M. & W. 277.
- The consideration to be set forth fully and truly.** By the Stamp Acts, on the sale of any property real or personal, the full purchase or consideration money shall be truly expressed and set forth in words at length in or upon the principal or only deed or instrument whereby the land, &c. sold is granted and conveyed to the purchaser under a penalty of 50*l.*, and a charge of quintuple duty. By sect. 24 of 48 Geo. 3, c. 149, where the consideration is not truly set forth, the purchaser may recover so much thereof as is not expressed and set forth as aforesaid. By sect. 25, if any attorney, solicitor, writer to the signet, or other person is employed in preparing any deed, bond or other instrument, in which the full purchase or consideration money is not truly set forth, he shall forfeit 500*l.*; and every attorney, solicitor, and writer to the signet, so offending, shall be from thenceforth disabled to practise as such; and every other person entitled to prepare any deed or instrument by virtue of his office, and being guilty of such offence in the execution thereof, shall thenceforth be incapable of holding the same; but by sect. 26, no person shall be liable to any penalty, disability, or forfeiture whatsoever, unless the duty actually paid be less than what would have been payable if the full consideration money had been truly expressed.
- Construction of the act.** If parties omit to comply with the directions of the act, and express a less consideration than was actually paid, although they incur heavy penalties, the deed is not thereby vitiated, but is admissible in evidence, provided it be stamped with the *ad valorem* duty sufficient to cover the amount of the consideration therein actually expressed, *Doe v. Lewis*, 10 B. & C. 673, recognizing *Robinson v. Macdonnell*, 5 Mau. & S. 228; and *Duck v. Braddyl*, 13 Price, 455; *S. C. M'Clel.* 217. See *post*, STAMPS ON DEEDS, Sect. X., p. 879, *et seq.*
- Consideration necessary to support deeds.** A deed must be founded upon good and sufficient consideration, not upon fraud or collusion, either to deceive purchasers *bonâ fide*, 27 Eliz. c. 4, or just and lawful creditors, 13 Eliz. c. 5, otherwise the deed may be avoided. The consideration may be either a *good* or a *valuable* one. A *good* consideration is such as that of blood, or of natural love and affection, where a man grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty. A *valuable* consideration is such as money, marriage

or the like, which the law esteems an equivalent for the grant, and is, therefore, founded in motives of justice. Deeds upon good consideration only, although binding on the party himself, are considered as merely voluntary, and are frequently set aside in favour of creditors and *bonâ fide* purchasers. See 2 Bl. Comm. pp. 296, 297. Formal Parts.

In a conveyance of lands, a limitation without consideration is void as against a subsequent purchaser for good consideration, being fraudulent under the stat. 27 Eliz. c. 4, *Doe* d. *Ravenstock* v. *Rolfe*, 8 Ad. & E. 650. The concurrence of a necessary party in the conveyance containing such limitation does not amount to a consideration, where the limitation is shown by circumstances apparent on the face of the conveyance, and of other conveyances forming part of the transaction, not to have been made for the benefit, or at the desire of such party, and the concurrence of such party does not appear to have been part of the contract at the time, *Ib.* See *Doe* d. *Otley* v. *Manning*, 9 East, 66.

Where a consideration is expressed in a deed, whether pecuniary or otherwise, another consideration, provided it be not contradictory to the former, may be established by a parol agreement. A consideration by parol agreement, larger than that expressed in the deed, is not a contradictory consideration, *Clifford* v. *Turrill*, 6 Jur. 921; 1 Y. & C. N. C. 138; *Rex* v. *Scammonden*, 3 T. R. 474. Although evidence is not admissible to show, contrary to the terms of the deed, that by the contract the consideration was not to be paid in money as stated in the deed, but in goods, such evidence is admissible to show that in point of fact the consideration was so paid, and that goods were accepted in payment, *Smith* v. *Battams*, 26 L. J., Exch. 232. A consideration which stands with the deed, and is not repugnant to it, may well be averred, *Willes*, 677; *Filmer* v. *Gott*, 7 Br. P. C. 70; 7 Co. 40 a; 2 Roll. Abr. 790. Proof of consideration not expressed.

A court of equity will relieve against an inadequate consideration not only in the case of contracts, but even after the execution of the conveyance; but in the latter case the inadequacy must be very gross to obtain relief, Sugd. V. & P. pp. 312, *et seq.*, 11th ed.; *Borell* v. *Dann*, 2 Hare, 440, 450. In the case, however, of heirs and others selling expectancies and reversions, the court requires that an adequate price according to the market value (even if not according to an actuary's valuation) shall have been given, and for default of it will set aside a purchase, Sugd. V. & P. pp. 314, *et seq.*, 11th ed. Hence, in dealing with an estate which has been sold as a reversion, it is desirable to know that an adequate price was paid for the reversion, 1 Davidson's Conv. p. 67, 2nd ed. Relief in equity when consideration is inadequate.

28. [5th. *Granting Part and Operative Words.*] This is that part by which the estate is granted, the technical words of which vary in different kinds of deeds, see further ASSIGNMENT, FEOFFMENT, What comprehended under the granting part.

Formal Parts. GRANTS; and as to the particular words by which estates in land will pass, see *post*, PURCHASE. The operative words also vary according to the nature of the conveyance.

Parcels to be accurately described.

29. [6th. *The Parcels.*] These ought to be accurately described, but an immaterial mistake or omission will not hurt the grant, the certainty whereof is capable of being manifested by other means, *Swift v. Eyers*, Cro. Car. 546; but where the thing granted is not in existence, as the grant of all lands in the occupation of M. P., and there are no lands in his occupation, this will be a void grant; and it is now settled that wherever the description is such, either in respect of the quantity, quality or place, as is sufficient to ascertain and identify the thing intended to be conveyed by the deed, that will be good, *Robinson v. Button*, 2 Roll. Abr. 52.

Description of property.

In all deeds particular attention should be paid to the description of the property intended to be conveyed. On the one hand care must be taken to include in a particular description, or in general words, all the lands, &c. which are intended to pass, so that no doubt may arise as to the extent and operation of the deed; and, on the other hand, not to insert words which will pass more than is intended. At law, no more will pass than what are sufficiently described, and which the grantor was competent to convey. The rule is clearly settled that when there is a sufficient description set forth of an estate, by giving the particular name of a close or otherwise, a false demonstration may be rejected; but if the premises be described in general terms, and a particular description be added, the latter controls the former, *Doe d. Smith v. Galloway*, 5 B. & Ad. 51; *per Parke, B.* Under a lease of all that part of the park called B., situate and being in the county of O., and now in the occupation of S., lying within certain specified abutments, with all houses, &c., belonging or appertaining to the said premises, and which are now in the occupation of the said S., a house on a part, which was within the abutments, but not in the occupation of S., was held to pass. But had the words of the grant been, all that part now in the occupation of S., and lying on the north-west side of the line, the occupation would have been a material part of the description, and nothing would have passed which was not both in the occupation of S., and on the north-west side of the line, *Doe d. Smith v. Galloway*, 5 B. & Ad. 43. If a deed correctly describe lands by its quantities and occupiers, though it describe it as being in a parish in which it is not, the lands shall pass by the deed, *Lambe v. Reuston*, 5 Taunt. 207; 1 Marsh. 23. A mistake in a deed in a statement of the then occupier of premises will not vitiate, if the description of the parcels is the same as in a former conveyance of the same premises, and the intention to pass the same property is clear, *Wilkinson v. Malin*, 2 Tyr. 544; 2 C. & J. 636.

If the words of description refer to a coloured plan, and are "all

the part coloured green, and now in the occupation of A. B.," all the green would pass, though some of it was not in the occupation of A. B. *Per Denman, C. J., Doe d. Smith v. Galloway*, 5 B. & Ad. 47. Formal Parts.

A rule of construction, stated by Lord Bacon, is, that if there be some land wherein all the demonstrations in a grant are true, and some wherein part are true and part false, the words of such grant shall be intended words of true limitation to pass only those lands wherein all the circumstances are true, *Doe d. Ashforth v. Bower*, 3 B. & Ad. 459. *Per Parke, B.* Where copyhold lands are so intermixed with the freehold that they cannot be distinguished, care must be taken not to include the copyholds in the operative words of the grant. This is commonly done by conveying "all such parts as are freehold and not copyhold" of and in all, &c., adding a full description of the parcels, including both the freeholds and copyholds. The covenant to surrender the copyholds in such a case will be, of "all such parts as are copyhold and not freehold" of and in the hereditaments previously described. See 2 Prest. Conv. p. 458, *ante*, p. 457. Description of freeholds and copyholds intermixed.

In conveyances by trustees or mortgagees it is common to insert the parcels in the recital, and to convey them by words of reference to the description in the recital, but it is often necessary to add words to pass lands which have been allotted or received in exchange under the provisions of an inclosure act in respect of the hereditaments comprised in the description, and which allotments have become subject to the title which attached and belonged to the lands in respect of which such allotments were made. See *ante*, pp. 17–19. A trustee or mortgagee in general can be required to convey only by the words and descriptions by which the conveyance was made to him, *Goodson v. Ellison*, 3 Russ. 594. It is observed by Mr. Preston "that mortgagees and trustees, with more caution than good reason, refuse to join in conveying by any other description than that which was introduced into the conveyance under which their title is derived," 1 Prest. Abstr. 91; 2 Prest. Conv. 457. Description in conveyances by trustees and mortgagees.

In assignments of leaseholds the prevailing practice is to introduce the parcels in the recital of the lease, and to assign the property comprised in the lease. Leaseholds.

The general principle of law, that where a person makes a grant of any given thing, he impliedly grants that also which is necessary to make the grant of the principal object effectual, does not admit of dispute, Co. Litt. 56 a, 163 a; 3 Com. Dig. 85, 5th edit.; *Pomfret v. Ricroft*, 1 Saund. 320. And this principle is carried to the extent, that the implied grant entitles the lessee to whatever is necessary to the full enjoyment of the subject of the grant, *Senhouse v. Christian*, 1 T. R. 560; *Blakesley v. Whieldon*, 1 Hare, 180. Incidents.

A conveyance of land to a railway company for the purposes of the line gives a right by implication to all reasonable adjacent and sub-

Formal Parts. jacent support connected with the subject-matter of the conveyance, and therefore although in the conveyance to the railway company the minerals are reserved, the grantor is not entitled to work them under his own land in any manner calculated to endanger the railway, *Caledonian Railway Company v. Sprot*, 2 Macq. H. L. Cas. 449; 2 Jur., N. S. 623; *Caledonian Railway Company v. Lord Belhaven*, 3 Macq. H. L. Cas. 56; 3 Jur., N. S. 573.

Where an owner of two or more adjoining houses sells and conveys one to a purchaser, such house is entitled to the benefit and subject to the burthen of all existing drains communicating with the other house, without any express reservation or grant for that purpose, *Pyer v. Carter*, 1 H. & N. 916; 26 L. J., Exch. 258.

Although the occupiers of contiguous tenements held under one title may sometimes set up implied grants from the original owner of easements not expressly mentioned, this only applies to such easements as are apparent and contiguous, that is to say, clearly indicated by the condition of the premises at the time of the division of title, and if the premises are then unfinished and the buildings are in a skeleton state, so that though there are openings left in the walls it is uncertain for what purpose they are intended, whether as doors or windows, and if as doors then in what direction and to what extent the ways thereto are designed to be carried there will be no implied grants, the easements not being apparent and continuous; and a plan attached to the grants, if it leave the matter equally uncertain, will not aid the implication, *Glare v. Harding*, 27 L. J., Exch. 287.

Sweeping
clause.

After the description of real property a sweeping clause is sometimes added of all other the lands, &c. of the grantor in a particular place, the use and object of which in general is to guard against any accidental omission, but in such cases it is generally meant to refer to estates or things of the same nature and description with those which have been already mentioned, *per Lord Mansfield*, Cowp. 12. A sweeping clause at the end of a very particular specification will not pass any property of a different nature from that particularly set forth, *Anon.*, Lofft, 398. General words in a deed, following words specifically describing and enumerating a certain house and closes, are controlled and limited thereby, *Doe d. Meyrick v. Meyrick*, 2 Tyr. 178; 2 C. & J. 223.

It is an undoubted rule established by the cases, that where several words preceding a general word point to a confined meaning, the general word shall not have such a meaning as to extend its effect beyond subjects *ejusdem generis*, *Reg. v. Nevill*, 8 Q. B. 463; *Sandiman v. Broad*, 7 B. & C. 96.

A., being seised of a manor in the county of Middlesex, which included lands held in demesne, called for the sake of distinction but not commonly known as the Kensington estate, and also other lands

occupied by copyholders, called for the sake of distinction but not commonly known as the Brompton estate, mortgaged all the lands called the Kensington estate three times over, and then by another mortgage in 1828 (for consolidating the three mortgages of the Kensington estate) reciting those three mortgages and the intention to make one mortgage of all the property comprised in them. A. mortgaged all those lands already in mortgage (by particular description following the parcels as stated in the previous deeds) "and also all other his lands and hereditaments (if any) in the county of Middlesex." It was held, that neither the manor nor the Brompton estate would pass under those words, *Rooke v. Lord Kensington*, 2 Kay & J. 753; 2 Jur., N. S. 755; 25 L. J., Chan. 795. See *ante*, p. 849. Wood, V. C., said, "The manor was nothing *ejusdem generis* with what had been before described, and everybody acquainted with conveyancing knows that manors are usually conveyed by a specific description." Precedence is given to manors; "manors, lands, tenements and hereditaments" is a common form in which conveyances run, and where, as in this case, the conveyance is of "the messuages, lands, tenements and hereditaments hereinafter described and intended to be conveyed subject to a mortgage thereof;" and then a description of messuages, lands, tenements and hereditaments, and then a conveyance of "all other the lands, tenements and hereditaments (if any) in the county of Middlesex aforesaid whereof or whereto the said Lord K. is seised or entitled for an estate of inheritance." V. C. Wood was of opinion that the clear intent and purport there must be held to be simply to sweep in other property *ejusdem generis* with the property which had been so conveyed, if there should be any, certainly not to include a demesne property and manorial rights of property of a totally different character from any thing thereby attempted to be conveyed or previously described in the deed, *Rooke v. Lord Kensington*, 2 Kay & J. 772.

The word "manor" is a word of large extent, and may comprehend many things, and by the grant of it without the words, with the appurtenances, will pass demesnes, rents and services, lands, meadows, pastures, woods, commons, advowsons appendant, courts baron, and perquisites thereof, that are in truth at the time of the grant parcel of the manor. But nothing that in truth is not parcel of the manor, although it be so reputed, will pass by the grant of the manor; and, therefore, if one having a manor afterwards purchased a warren to it, and then granted away the manor, the warren will not pass by such grant. It seems that things united with a manor, and which have got a reputation of appendancy, may pass by a grant of the manor with the appurtenances. By a grant of a manor, lands in several towns or parishes may pass, *Shep. Touch.* 92; see 1 *Leon.* 27, 28; *Moseley v. Motteux*, 10 M. & W. 533; *Rooke v. Lord Ken-*

What will pass by particular words.

Formal Parts. *sington*, 2 Kay & J. 753, where an advowson appendant passed by a general release of the manor with general words. Where the lord of a manor purchases the copyhold lands held of it, and thereby extinguishes the copyhold interest, such lands will pass by a subsequent conveyance or devise of the manor, for the acquisition by the lord of the copyhold interest, and the consequent extinguishment of such interest, does not make the freehold less part of the manor, *Earl Lincoln v. Archdecne*, 1 Coll. 98; *Hicks v. Sallitt*, 3 De G., M. & G. 782. A grant of a reputed manor will not pass a freehold interest in the waste within the circuit of a manor, nor of any specific tenement of the grantor, *Doe d. Clayton v. Williams*, 11 M. & W. 803.

The word "farm" is a good legal description for a capital messuage (or principal dwelling-house) and all the land belonging to or occupied with it, Co. Litt. 4 b, 5 a; Shep. Touch. 93. A "messuage" (at least if the words "with the appurtenances" be added) includes the dwelling-house with its adjacent buildings, the garden, orchard, and curtilage. A toft is the site of a house which has been pulled down. The land itself will pass in a conveyance adequate to that purpose, by the name of a "mine," but the grant may, it is conceived, contain an exception of so much of the surface as is not necessary for the purposes of mining, *Earl of Cardigan v. Armitage*, 2 B. & C. 197; Co. Litt. 48 b; Burton on Real Prop., pp. 175, 176. "Water" does not include the land upon which it stands, and by a grant of so many acres of water, nothing passes but the right of fishing, Co. Litt. 4; 2 Bl. Comm. 20; it should be described as so many acres of land covered with water. A conveyance of land passes running water unless expressly excepted, *Canham v. Fisk*, 1 Price, P. C. 148. A right of ferry may pass by a conveyance of land, with "all profits and commodities belonging to the same," *Reg. v. Great Northern Railway Company*, 14 Q. B. 25. A deed, whereby a person conveys "one full moiety," is *prima facie* evidence that the grantor is owner of the other moiety, *Reed v. Williams*, 5 Taunt. 257.

An assignment of one equal eighth-part or share, or other part or share, parts or shares to which the assignor became entitled, was held, upon the construction of the recitals and of the whole instrument, to pass only *one-eighth*, although the assignor was entitled to a larger share, *Gray v. Earl of Limerick*, 2 De G. & S. 370; 12 Jur. 817; 17 L. J., Ch. 443.

By the grant of a house all the fixtures pass (*Colegrave v. Dias Santos*, 2 B. & C. 76), but it is otherwise where, by an enumeration of particular fixtures in the conveyance, an intention is shown to exclude other fixtures of greater value and importance, *Hare v. Horton*, 2 Nev. & M. 428; 5 B. & Ad. 715.

By a mortgage of a mill, the stones, tackling, and instruments necessary for the working of the mill, pass to the mortgagee, *Place v.*

Fagg, 4 M. & R. 277. Upon the sale or mortgage of a mill, looms used in the mill, not attached to the freehold, but removable at pleasure, were held not to pass under the general words "machinery belonging to the mill," *Hutchinson v. Kay*, 23 Beav. 413; 3 Jur., N. S. 682; 26 L. J., Ch. 457. Formal Parts.

If two persons join in a grant of all their lands, it will comprise not only the joint property of both, but the several property of each; and if one of them grant all his lands, his share of the joint property will be included, *Burton*, 176. Conveyance by parties having several interests.

Where a release is intended for a double purpose, and the words of it are large enough, it may operate as a release and an assignment, so as to pass both the reversion in fee and a chattel interest in the same lands, *Barton v. Barclay*, 7 Bing. 745.

A person having a legal estate in certain property as a trustee, and an equitable and beneficial interest in the same estate, executed a deed which might be construed either as purporting to pass both estates or only the equitable estate which he alone had a right to convey, it was held, that the instrument should be construed as intending to pass only the estate which he had a right to convey, for a party shall be presumed to have intended to do only that which he had a right to do, provided the instrument be fairly and reasonably capable of that construction, *Faussett v. Carpenter*, 2 Dow & Cl. 232. Sir E. Sugden has since expressed a decided opinion against this decision, and said that it cannot operate to weaken the rule of law which he laid down thus, "It is clear that when a person having several estates or interests in a denomination of land joins in conveying all his estate and interest in the lands to a purchaser, every estate or interest vested in him will pass by the conveyance although not vested in him in the character which he became party to the conveyance," *Drew v. Lord Norbury*, 3 Jones & L. 267, 284. See *Rooper v. Harrison*, 2 Kay & J. 112.

Although a conveyance by lease and release is not properly used to pass leaseholds for terms of years, yet they may pass by that mode of conveyance if such appears to be the intention of the parties, *Marshall v. Frank*, Prec. Ch. 480. A deed of release containing the words "all that messuage, mill and lands called Clock Mills, in the possession of persons named, and all lands or meadows to the said messuage or mill, &c., belonging, used, occupied and enjoyed, or deemed taken or accepted as part thereof," &c., will pass leasehold lands, which answer that description, as well as freehold, especially against the releasor, *Doe d. Davies v. Williams*, 1 H. Black. 25.

If a party possessed of a term of years make an assignment for the benefit of his creditors of various species of personal property, concluding with the words "*and all his personal estate whatsoever*," these latter general words are sufficient to pass the term where it was

Formal Parts. the manifest design of the party to convey every thing of a personal nature to which he had any title, and there was nothing to show that the general words were meant to be restrained in their operation, *Ringer v. Carn*, 3 Mees. & W. 343; 2 Jur. 256; *Carter v. Warne*, 1 M. & M. 479; *How v. Kennett*, 3 Ad. & E. 659; see *ante*, pp. 464, 465, 610, n. (a).

Words of grant not narrowed by conditions of sale.

Where a deed purported to convey a messuage or tenement formerly used as a workhouse, in the occupation of W. with the appurtenances, and it was shown that there was a small garden adjoining, which had been always occupied by W. as master of the workhouse: it was held, that the garden passed, and that the grantor could not afterwards be admitted to narrow the operation of his grant, by showing that the conditions of sale, signed by the vendor at the time of the sale, expressly excepted the garden; or by proving subsequent declarations of the grantee that it had not been purchased by him, *Doe d. Norton v. Webster*, 12 Ad. & E. 442; 4 P. & Dav. 270; 4 Jur. 1010. See *Williams v. Morgan*, 15 Q. B. 782.

A deed purporting to convey all that messuage or farm house, &c., and several closes, &c. of land thereto belonging, called Gotton Farm, in the occupation of G. S. and containing, &c., and consisting of several particulars specified in the first division of a schedule thereunder written and more particularly delineated in a map or plan thereof, drawn in the margin of the said schedule. This description was not followed by any general words, and neither the schedule nor the plan contained the close in question. In an action brought to try the right to a slip of land which was not mentioned either in the schedule or in the plan above referred to, evidence was offered on the part of the defendant to show that the *locus in quo* had always been occupied with the closes mentioned and delineated in the schedule and plan, and treated as part of Gotton Farm: it was held, that this evidence was not admissible, and that the deed was conclusive, *Barton v. Daves*, 10 C. B. 261.

General words.

In almost every assurance of corporeal hereditaments, numerous words called "general words," descriptive of every kind of easement, privilege or appurtenance supposed to be capable of belonging to the property assured, are added after the description. (See *post*, PURCHASE DEEDS (a)). Although easements and privileges legally appurtenant to property will pass by a conveyance of the property simply without any additional words, yet easements and privileges may be used or enjoyed with or may be reputed to appertain to property, and may be capable of being conveyed with it without being legally

(a) These words are not to be used indiscriminately, but to be adapted to the nature and subject-matter of the conveyance, whether a manor, a farm, a messuage, in a town or in the country, &c.

appurtenant, and such easements and privileges will *not pass* by a conveyance of the property simply, or without being expressly mentioned, 1 Davidson's Conv. 88, 89; *James v. Plant*, 4 Ad. & E. 749; and numerous cases cited in Shelford's Real Prop. Stat. pp. 64—66, 6th ed. Formal Parts.

After the general words it has been usual to add the clause of "and the reversion, &c." This is a formal, and not a necessary clause, 2 Prest. Conv. 463. By a grant of lands the reversion or remainder of those lands will pass, but lands in possession will *not* pass by a grant of the reversion or remainder of those lands, but a reversion will pass by the name of a remainder, or a remainder will pass by the name of a reversion, *Ib.* These words are entirely omitted by some modern conveyancers, and in some instances they should not be inserted as where a partial or particular estate only, as an estate for life, or years, is granted, for in such case these words are improper as purporting to pass an ulterior interest beyond what is intended. Reversion, &c.

After the general words when used, or when omitted immediately after the parcels, follows all the estate clause, which purports to convey all the estate, right, title, interest, claim, and demand of the several conveying parties in the premises. These words are considered as merely formal, for an absolute grant of the thing itself, without restriction, must necessarily convey all the grantor's estate or interest in it. This clause has been the efficient part of the deed in respect of a term of years, *Jermyn v. Orchard*, Show. Parl. C. 199; 3 Prest. Abstr. 38. It should be omitted in some cases, as where a lessee grants an underlease, and where a particular estate or interest only of the grantor, as for life or years, is intended to pass, and he retains an ulterior interest. These words, however, may be controlled by the context of the deed, as shown by the limitation expressed in the habendum, *Wright v. Cartwright*, 1 Burr. 282. And, according to the case of *Earl Derby v. Taylor*, 1 East, 502, the habendum may limit a particular estate by way of underlease, notwithstanding the clause of all the estate. The premises intended to be conveyed by a deed of mortgage were described as the grantor's undivided moiety, &c., the deed afterwards professed to convey *all his estate, &c.*, in the premises. This conveyed the moiety only, to which he was entitled in his own right, and not one-third part of the same premises in which he was interested as a co-trustee with another party, *Doe d. Raikes v. Anderson*, 1 Stark. 155. All the estate, &c., clause.

Wood, V. C., said, "That if he had to determine the point he should not think himself justified in holding that a conveyance by persons described as executors, and assigning the estate they held *quâ* executors for the 600 years term would pass by force of the words 'all the estate, right, title, and interest,' that which one of them held for

Formal Parts. his own purposes and in his own right," *Rooper v. Harrison*, 2 Kay & J. 112.

All deeds.

The last part of the premises used formerly to contain a grant of all such deeds relating to the property as are in the grantor's possession, or which he can obtain without suit. Such a grant, however, it is understood is generally now considered superfluous. According to the case of *Field v. Yea*, 2 T. R. 708, the deeds will belong to the grantor, if he retain any part of the lands to which they relate, unless he expressly grants the deeds, transferring the property of them to the grantee, so as to enable him to maintain an action of detinue or trover. See 2 Prest. Conv. 466; *Wiseman v. Westland*, 1 Y. & J. 117; *Newton v. Beck*, 3 H. & N. 220.

Distinction
between an
exception and
a reservation.

30. [7th. *The Exceptions.*] After the clause of "all the estate, &c.," usually follow the exceptions and reservations which are intended to be made out of the property previously described. The words except and reserved although frequently conjoined, are not always both applicable, for every exception is a reservation, but every reservation is not an exception; for there may be a reservation of something not *in esse*, as a reservation of rent, or a right of way, but an exception is ever of part of the thing granted, 1 Inst. 47 a; *Shep. Touch.* 80; *Cro. Eliz.* 657. When the words of description used in the deed embrace, under a collective name or general denomination, more lands than are intended to pass, there should be an exception of such of the lands as are not intended to pass. This exception should be made by the words "excepting out of the grant hereby made," or some other words to that effect. The clause of exception may be in any part of the deed, 3 Prest. Abstr. 37. Where a right of way is reserved over any part of the lands granted, "Except and always reserved out of the grant hereby made unto the said grantor, his heirs and assigns, &c. the use, &c., describing the way. See *post*, GRANT of a Way. The rules respecting an exception are—

1st. It must be to the grantor and not a stranger. But it is not necessary to name any person.

2nd. It must be part of the thing granted, or of an easement, as a way, &c., and not of a thing not comprised in the grant, or not *in esse*, *Co. Litt.* 47.

3rd. It must be of a particular thing out of the property comprised under *general words*, or under a general denomination, as a farm out of a manor, a close out of a farm, or the like. For the exception of a particular thing granted by a particular name will be repugnant to the grant, and void for that reason.

4th. It must be of a thing capable of being severed, and the description of the thing excepted must be as certain as if it were to be granted, 2 Prest. Conv. 461, 462; 3 Prest. Abstr. 37; *Shep. Touch.* 79.

5th. There may be an exception out of an exception, as in the instance of a grant of a manor reserving a farm, parcel of the manor, except a close called B., a parcel of the farm. Thus the close so excepted out of the exception will remain within the operation of the grant, for the last exception does, in the language of the books, leave the thing at large, 3 Prest. Abstr. 38.

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2. *The Habendum.*

31. With the *habendum* is usually coupled the *tenendum* by the words *to have and to hold*, and under the feudal tenures this latter word had an appropriate meaning, but is now retained more from custom than for any utility. The office of the *habendum* is to limit with certainty the estate contained in the premises. Where the *habendum* is not absolutely inconsistent with the grant in the premises, it will qualify the grant; but where it is inconsistent with such grant, as if a grant be made to A. and his heirs, *habendum* to him for his life, or to him and his executors for years, the grant in the premises will prevail, and the *habendum* be rejected, Shep. Touch. 98; 2 Prest. Conv. 439, 440; so a *habendum* may serve to explain or supply any thing wanting in the premises, as if there be no grantees named in the premises, then the grant will be good to the person whose name is in the *habendum*, Shep. Touch. 75; so if in the premises the land is given to two (whereby they would be joint tenants), *habendum* the one moiety to one and the other moiety to the other, this explains the premises and makes the grantees tenants in common, 1 Inst. 183 b.

Former use of the *tenendum*.

Office of the *habendum*.

To explain the premises.

Where the words of a *habendum* in a deed are manifestly contradictory and repugnant to the words in the premises, the former are to be disregarded; but if part of the words in the *habendum* be contradictory to those in the premises, and part explanatory, the contradictory part only need be rejected. On a demise to H. T., his heirs and assigns, to have and to hold to the said H. T. and her assigns for the life of G. T., it was held that, under these words, an estate passed to H. T., her heirs and assigns, for the life of G. T.; so that, on her death in the life of G. T., her heir would take as special occupant, *Doe d. Timmis v. Steele*, 12 Law J., N. S. 272, Q. B. The principle is, that where there are two clauses in a deed repugnant to each other, the first shall prevail, *Doe d. Leicester v. Biggs*, 2 Taunt. 113; and every deed is expounded most strongly against the grantor, and most for the advantage of the grantee; and therefore the grantee shall take by the premises, if that be most beneficial for him, and not by the *habendum*; and the grantor shall not be allowed by any subsequent part of the deed, to contradict or retract the gift made in the premises, 8 Co. 54 b; 1 Inst. 299 a. But where there is no estate expressed in the premises, but only an estate for life by implication of law, the *habendum* may not only abridge such implied estate, but

Formal Parts. defeat and render it void; as in the instance of a feoffment to A., *habendum* from a day to come, or from a future event, the deed is void, for in limitations at common law a freehold cannot commence *in futuro*, Roll. Ab. 66; Hob. 171; Skinn. 544; Com. Dig. Faits, (E. 9); 1 Co. R. by Thomas, 479 n (a 1).

The rule that the estate of the *cestuis que trust* is commensurate with that given to the trustees is inapplicable to limitations in a deed, therefore, where an estate was limited to trustees in fee, but the trust in favour of the *cestuis que trust* wanted the ordinary words of inheritance, it was held, that they took life estates only, *Holliday v. Overton*, 15 Beav. 480; 16 Jur. 346; 21 Law J., Ch. 769; affirmed on appeal, 16 Jur. 751.

3. The Reddendum.

Definition of the reddendum.

Requisites of a reservation.

32. The *reddendum* is that part of the deed beginning with the words, "Yielding and paying therefore yearly, &c.,"—which is called a reservation of rent; but if the thing reserved be other than money, the words generally made use of are, "Except nevertheless and always reserved unto the grantor full right, &c." To every good reservation these things are essential—1st. That it be by apt words; 2nd. It must be something issuing out of the thing granted, and not a part of the thing granted, nor issuing out of any other thing; 3rd. It must be out of such a thing whereupon the grantor may have resort to distrain, as lands or houses; 4th. It must be made to the grantor, and not to a stranger to the deed, Perk. sect. 625; *Whitelock's case*, 8 Co. 70; Shep. Touch. 80. A right of entry cannot be reserved to a stranger to the estate, *Doe d. Barber v. Lawrence*, 4 Taunt. 23. On a conveyance of lands in fee, with an exception and reservation of a right of sporting, it was held, that such right did not take effect as a reservation, but as a new grant, *Wickham v. Hawker*, 7 M. & W. 63. See *Pannell v. Mill*, 3 C. B. 625. A man who conveys an estate in fee cannot reserve to himself an estate for life, for this would be a freehold to commence *in futuro*, nor on the grant of an advowson reserve to himself the next presentation. Such objects must be effected by other means than a reservation. The *reddendum* in deeds is principally to be found in leases, see *post*, LEASES.

4. Conditions.

Definition of a condition.

Different kinds. Conditions in deed and in law.

33. A condition is a clause of contingency contained in the deed, whereby the grant may be defeated on the happening of certain events therein specified. See CONDITIONS, *ante*, pp. 620, 621.

34. Conditions may be either in deed or in law. A condition in deed is where an express proviso is contained in the deed for defeating the estate granted upon certain conditions, as on the nonpayment of rent, &c. A condition in law is that which is implied in law, as

where a man makes a lease for life, without more saying; here is a condition in law, that if the lessee make any greater estate than that which he himself has, that the lessor may enter, 1 Inst. 215 a. Conditions are also precedent and subsequent, see further, *ante*, CONDITIONS, p. 620. Under this head may also be comprehended conditional limitations to uses and remainders, which belong more to the substance than the form of deeds, and constitute an important branch of the learning respecting the law of real property.

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5. Covenants.

As to the definition and different kinds of covenants, &c., see COVENANTS, *ante*, pp. 779—783, and INDEX TO PRECEDENTS.

6. The Conclusion of a Deed.

This part comprehends the clause, "In witness whereof," the signing, sealing and attestation, see ATTESTATION, *ante*, pp. 429, 430.

35. Besides an acknowledgment of the receipt of a pecuniary consideration, which is almost invariably contained in the body of the deed, a further receipt for the consideration money ought to be indorsed and signed by the parties to whom it is paid, see *ante*, pp. 37, 38, for the want of such receipt is implied notice that the purchase money remains unpaid, and that the land remains charged in equity with the payment of the consideration.

Receipt to be indorsed.

The absence in a deed of a receipt for the consideration, though it is notice of its nonpayment, is not constructive notice of other irregularities in the transaction, *Greenslade v. Dare*, 20 Beav. 284. See *Barnhart v. Greenshields*, 9 Moo. P. C. C. 18. A receipt indorsed on a deed not being under seal cannot amount to an estoppel, but can only be evidence for the jury capable of being rebutted by the other circumstances, *Lampon v. Corke*, 5 B. & Ald. 611. Neither the receipt in the body of the deed, nor the receipt usually indorsed on it, prevents the vendor from showing in equity that the money was not paid, *Winter v. Lord Anson*, 1 Sim. & S. 434; 3 Russ. 488; *Coppin v. Coppin*, 2 P. Wms. 291. See *White v. Wakefield*, 7 Sim. 401; *Kennedy v. Green*, 3 My. & K. 699.

Although a purchaser has not the right in every case to insist upon the vendor being present to receive the purchase money, yet, should the requisition be made under circumstances which justify it, the vendor should comply with the request, *Viney v. Chaplin*, 4 Jur., N. S. 619; 27 Law J., Ch. 434; 4 Drew. 237. In any case where a vendor does not attend personally to receive his money, a purchaser has a right to insist upon a written authority to pay to the solicitor, *Ib.* A vendor's solicitor has no authority by virtue of his office to receive the purchase money, although he may have possession of the deed of conveyance, with the receipt indorsed or signed by his client, *Ib.*

Payment and receipt of purchase-money.

*Formal Parts.***Inrolment.**

Inrolment is necessary to the validity of some deeds by several statutes, as a bargain and sale (*ante*, p. 448), and the assurances by tenants in tail, under the act for the abolition of fines and recoveries, see Shelford's Real Prop. Stat. pp. 341, 351, 352, 365, 376, 6th ed. A conveyance of real estate to charitable uses is required to be inrolled by 9 Geo. 2, c. 36.

Proof of inrolment.

Where a deed requires an inrolment, the indorsement by the officer who is authorized to inrol, is, upon general principles, sufficient evidence of the fact of an inrolment, *Kinnersley v. Orpe*, 1 Doug. 56. A party relying on a defective inrolment should produce it, *Doe d. Lewis v. Bingham*, 4 B. & Ald. 676, 678.

To prove the inrolment of a deed under the 9 Geo. 2, c. 36, the deed was produced, with the following memorandum indorsed thereon:—"Inrolled in his Majesty's High Court of Chancery, the 17th day of December, 1836, being first duly stamped according to the tenor of the statutes made for that purpose. D. Drew." Evidence was given that Mr. Drew was a person who, at the time of the trial, acted as the clerk of the inrolments in the Court of Chancery, and that on the memorandum being produced to him a short time before the trial, at the Six Clerks' Office, which is under the same roof as the Inrolment Office, Mr. Drew acknowledged the name to be his signature:—It was held sufficient, the memorandum having been made by the proper officer in the execution of his duty, *Doe d. Williams v. Lloyd*, 1 Scott, N. R. 505; 1 Mann. & G. 671.

IV. WHERE A DEED IS NECESSARY OR OTHERWISE.

At common law.**Transfer of incorporeal hereditaments.**

36. The Statute of Frauds renders a writing necessary to the completion of all contracts, except in particular cases, but it does not require a deed. All transfers of incorporeal hereditaments must as a rule be by deed; therefore, although an exchange of lands, &c. lying in the same county might formerly have been effected without deed, yet an exchange of incorporeal hereditaments could not, Litt. sect. 62; 1 Inst. 50; so a partition between joint tenants must have been by deed, but a partition between coparceners or tenants in common formerly need not, Litt. sect. 250; 1 Inst. 169. But by the 8 & 9 Vict. c. 106, s. 3, it is enacted, "That a feoffment made after the 1st October, 1845, otherwise than a feoffment made under a custom by an infant, shall be void at law unless evidenced by deed; and that a partition and an exchange of any tenements or hereditaments not being copyhold, and a lease required by law to be in writing of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said 1st day of October,

Feoffments, partitions, exchanges, &c., with certain exceptions, to be by deed.

1845, shall also be void at law unless made by deed: provided always, that the said enactment, so far as the same relates to a release or a surrender, shall not extend to Ireland." Partitions and exchanges had for many years before the passing of this act been always made by deed. A letter of attorney to deliver or receive seisin must be by deed, 1 Inst. 48 b; and as a rule any authority given by a principal must be by deed. As to the necessity of a deed to pass incorporeal hereditaments, see Shelford's Real Prop. Stat. pp. 51—55, 6th ed.

Where neces-
sary.

Letters of
attorney.

37. Every agreement between a debtor and his creditors ought to be by deed; for as a rule where a person is bound by deed, his obligation cannot be discharged but by deed. See *ante*, p. 560.

Discharge by
deed.

V. CONSTRUCTION OF DEEDS.

38. The first great rule in the construction of deeds is, that the intent of the parties shall prevail, if it can be discovered, and is not contrary to the rules of law; so that a deed shall not be declared void for uncertainty, so long as any clear and feasible intent appears on the face of it. In more recent times the judges have been much more liberal than formerly, and have had more consideration for the substance, the passing of the estate according to the intent of the parties, than the shadow, namely, the manner of passing it, *Doe d. Lewis v. Davies*, 2 M. & W. 516; *Doe d. Milburn v. Salheld*, Willes, 673; *Roe d. Wilkinson v. Tranmarr*, *Ib.* 682. Accordingly it is held not necessary to the validity of deeds that they should operate according to the words in which they are expressed, for when the rules or policy of law prevent such operation, the instrument may legally operate in a different manner, so as to give effect to the legal intent of the parties; therefore the words "limit and appoint" may operate as words of grant, so as to pass a reversion, *Shove v. Pincke*, 5 T. R. 124, 310; so a deed which cannot operate as a bargain and sale for want of pecuniary consideration, or for want of enrolment, nor as a feoffment for want of livery of seisin, may be good as a covenant to stand seised to uses, if the deed contains any words, and the parties stand in such relation as to give effect to such a covenant. See *ante*, p. 14, pl. 13.

First rule of
construction.

Thus where the objection was, that a deed was not inrolled within six lunar months after the date, and therefore was not effectual to vest the freehold in the tenant to the *præcipe*; it was held, that as to such of the lands as were on lease, that the deed operated as a grant of the reversion. It was also held, that an instrument, granting "all the estate, right, title and interest, legal and equitable," executed by a person having the equitable interest, would pass such interest, *Smith v. Frederick*, 1 Russ. 209, 210. So a deed which cannot operate as a release because it grants a freehold *in futuro*, which is contrary to a rule of law, may operate as a covenant to stand seised. A. in con-

Construction
where deed
may operate in
two ways.

Construction. sideration of natural love to his brother, and of 100*l.* by deeds of lease and release, granted, released and confirmed certain real estates, *after his own death*, to his brother B. in tail, remainder to C., another brother of A. in fee, and he covenanted and granted that the premises should, after A.'s death, be held according to the limitations in the deed. Although the deed could not operate as a release because it attempted to convey a freehold *in futuro*, yet that it was good as a covenant to stand seised, the court thinking that the express covenants by the grantor that the estate should go in such manner as was granted by the deed, were strong in favour of such a construction, *Roe d. Wilkinson v. Tramarr*, Willes, 682; 2 Wils. 75; *Doe v. Simpson*, 2 Wils. 22. This case, however, was not decided upon the ground of the covenant to enjoy, 2 Mees. & W. 518; *Thorne v. Thorne*, 1 Vern. 141.

A deed which may take effect as a covenant to stand seised, is good, though the use is to arise after the decease of the covenantor, and though he does not affect thereby to dispose of the freehold in the meantime. And although the use is to arise at a period which may not happen till long after the covenantor's death, because in the meantime there will be a resulting use, *Doe d. Dyke v. Whittingham*, 4 Taunt. 20.

Second rule.

39. Another rule of construction is, that words which are evidently repugnant to the general intention of the parties will be rejected; for the words of the deed are not the principal thing to be attended to, but the intention of the parties, *Smith v. Parkhurst*, 3 Atk. 135; but where the words of the deed are so uncertain that the intention cannot be collected, the deed will be void, as in the case of a gift to one of the four children of A. B., without naming which, *Shep. Touch.* 236, 237. Though there be two persons of the same name, the deed will not be void on that account for uncertainty, but under the rule, that *certum est quod reddi certum potest*, the certainty of the person may be averred and proved. But if the evidence fail in ascertaining the grantee, then the deed is void for uncertainty, *Thomas v. Thomas*, 6 T. R. 676; *Shep. Touch.* by *Prest.* 53.

Third rule.

40. Another rule of construction is, that all the words of the deed must be taken most strongly against the grantor, and most beneficially for the grantee, *Windham's case*, 5 Co. 7, 8; *Shep. Touch.* 87; but this is to be understood with this limitation, that no wrong be thereby done, *Shep. Touch. ub. sup.* And this rule applies more strongly to a deed poll than to an indenture, because in the former case the words are those of the grantor only, but in the latter they must be considered as the words of both parties. See *Broom's Legal Maxims*, p. 529, 3rd ed. Every deed is to be taken most strongly against the grantor, but where an owner of an estate on marriage settles it upon himself for life with remainders over, and is therefore in one sense both grantor and grantee, his interest under the deed is to be construed

as if a stranger had been the grantor, *Vincent v. Spicer*, 22 Beav. 380; 2 Jur., N. S. 654; 25 L. J., Chan. 589. The general rule that the construction must be taken most strongly against the grantor may be modified by the necessity of giving effect to every word of the instrument, if it can reasonably be done, *Patching v. Dubbins*, 1 Kay, 1; 17 Jur. 1113. Construction.

41. A fourth rule of construction is, that if the words may have a double intendment, and the one standeth with law and the other is against, it be taken in that sense which is agreeable to law; therefore if tenant in tail make a lease of land to B. for term of life, and do not mention for whose life it shall be, this shall be taken for the life of the lessor and not for the life of the lessee, because a tenant in tail cannot lawfully make a lease beyond his own life; but if such a lease were made by a tenant in fee simple, it would, according to the third rule, be taken most strongly against himself, 1 Inst. 42 a; *Shep. Touch.* 88; 2 Bl. Com. 380. Fourth rule.

If some of the covenants in an indenture, or of the conditions of a bond are against law and some lawful, the covenants or conditions which are against law are void *ab initio*, and the others remain good, 11 Rep. 27 b; *Greenwood v. Bishop of London*, 5 Taunt. 727; 1 Marsh. 292; *Newman v. Newman*, 4 Maule & S. 66 n. 1; *Butler v. Wigg*, 1 Saund. 66 a. Whether an instrument is rendered altogether void by a statute depends upon the wording of the latter. The general principle is, that if any clause in a deed which is void by the statute or common law, be mixed up with good matter which is entirely independent of it, the good part stands but the rest is void, *Hove v. Synge*, 15 East, 440; *Doe v. Pitcher*, 6 Taunt. 350; *Wigg v. Shuttleworth*, 13 East, 87; *Kerrison v. Cole*, 8 East, 231; but if the part which is good depends upon that which is bad the whole instrument is void, *Biddell v. Leder*, 1 B. & C. 327; 2 D. & R. 499. See *Morgan v. Horseman*, 3 Taunt. 244; *Fuller v. Abbott*, 4 Taunt. 105; *Gaskell v. King*, 11 East, 165; *Johnson v. Legard*, 6 Maule & S. 60.

42. Another rule is, that if in a deed there are two clauses so totally repugnant to each other that they cannot stand together, the first shall be received and the latter rejected, *Hardr.* 94, wherein it differs from a will, for then of two repugnant clauses the latter shall stand, *Co. Litt.* 112; 2 Bl. Com. 380. It seems, however, to be the true rule that this rejection of repugnant matter can be made in those cases only where there is a full and intelligible contract left to operate after the repugnant matter is excluded, otherwise the whole contract or such parts of it as are defective will be pronounced void for uncertainty, *Broom's Legal Maxims*, 517, 3rd ed.; where the maxims relating to the interpretation of deeds and written instruments are very fully and ably considered, pp. 479—613. Fifth rule.

Construction.

It is a rule of the courts, in construing written instruments, that when an estate is given, or an estate is conveyed, in one clause of the instrument in clear and decisive terms, such interest or estate cannot be taken away or cut down by raising a doubt upon the extent and meaning and application of a subsequent clause, nor by inference therefrom, nor by any subsequent words that are not as clear and decisive as the words of the clause giving that estate or interest, *Thorn-ton v. Hall*, 2 Cl. & Finn. 22.

VI. AVOIDING OF DEEDS.

Grounds for
avoiding deeds.

43. Deeds may not only be avoided by reason of some deficiency in the original making, or in the matter of the deed, of which mention has already been made, but also by things *ex post facto* which are next to be considered; as—1. Rasure, or any alteration, after the deed is executed; 2. Breaking off or defacing the seal; 3. Cancellation.

1. *Rasure, Alteration, &c.*Material alter-
ation invali-
dates deed.

44. Where a deed is altered in any material point, whether by the plaintiff himself or by a stranger, without the privity of the defendant, the deed was formerly held to be void altogether, *Pigot's case*, 11 Co. 27; as where on a bond to the sheriff, the name of the sheriff was omitted, and after delivery thereof the *name* was interlined; or in a bond of 10*l.*, another 10*l.* was added, making it 20*l.*, the bond was held void, Perk. sect. 123 *et seq.*; Shep. Touch. 68, 69; but where the addition to a party's name, as "maltster," was erased, this was held not to invalidate the deed, *Doe v. Hirst*, 3 Stark. N. P. C. 60.

A deed, which is well and sufficiently made in its creation, may become void by being afterwards altered by erasure, interlining, addition, drawing a line through the words (though they be still legible), or by writing new letters upon the old, in any material place or part of it; as if it be in a deed of grant, in the name of the grantor or grantee, or in the thing granted, or in the limitation of the estate; or if it be in an obligation, when the word heirs shall be cancelled or the sum increased, or in the date of either or the like, be the same by the party himself that hath the property of the deed, or any other whomsoever, except it be by him who is bound by the deed, or by his order or consent, for he shall not take advantage of his own wrong, Shep. Touch. by Prest. 68; Com. Dig. Fait (F. 1); *Harden v. Clifton*, 1 Gale & D. 22; 1 Ad. & E., N. S. 522. The alteration of a deed avoids the instrument, because no man shall be permitted to take the chance of committing a fraud without running any risk of losing by the event when detected, *Master v. Miller*, 4 T. R. 329. If the alteration be made by the party entitled to the benefit of the deed, although in a place not material, and such alteration tends to the advantage of the other party, and to his own disadvantage, yet the deed

is made void, B. N. P. 267; 10 Rep. 92; 11 Rep. 27 a. But if the alteration be made by the party bound by this deed, in any material or immaterial part thereof, or if a stranger, without the privity or consent of the owner of the deed, shall make any such alteration in any part of a deed, not material, by inserting inoperative words, or words the effect of which is implied by law, the deed will remain good notwithstanding, Shep. Touch. 69; Com. Dig. Fait (F. 1). If the legal effect of a deed is the same before the alteration as after it, and is made by a stranger, the alteration does not avoid it. As where a bond was conditioned for the payment of "100*l.* by instalments, till the full sum of *one pounds* be paid," and the word *hundred* was inserted by a stranger, *Waugh v. Bussell*, 1 Marsh. 311. A warrant of attorney, in which one of the christian names of the party which had been at first omitted was inserted, and then re-executed by the party, was not defeated, *Coke v. Brummell*, 2 B. Moore, 495.

How avoided.

A deed may be considered as one entire transaction, operating as to the different parties to it, from the time of the execution by each, but not perfect till the execution by all the conveying parties. Any alteration made in the progress of such a transaction still leaves the deed valid as to the parties previously executing it, provided such alteration has not affected the situation in which they stood.

When a deed is altered in a material part it ceases to have any *new operation*, and no action can be brought in respect of any pending obligation which would have arisen from it had it remained entire, but it still may be given in evidence to prove a right or title created by it having been executed, or to prove a collateral fact, *Agricultural Cattle Insurance Company v. Fitzgerald*, 15 Jur. 489; 20 L. J., Q. B. 244. On an action of debt for calls, under 7 & 8 Vict. c. 110, s. 55, it appeared that the deed of settlement of the company had been executed by the defendant as a shareholder, but there was an unexplained erasure of the name of another person who had signed it as a shareholder, it was held, that the deed might be given in evidence to prove the fact of the defendant being a shareholder, *Id.*

Where a mortgagee conveyed the legal estate to the mortgagor by a deed on being paid the mortgage money, and the latter reconveyed it to trustees for the purpose of securing an annuity, and at the time of the execution by the mortgagee there were several blanks left in the deed, but not in that part which affected him, but merely for the sums to be received by the mortgagor from the grantees of the annuity, which were all filled up at the time of the execution of the deed by the mortgagor, but several interlineations were made in that part of it after the execution by the mortgagee; it was held, that such deed was not void, but operated as a good conveyance of the estate from the mortgagor to the trustees for the payment of the annuity, *Doe d. Lewis v. Bingham*, 4 B. & Ald. 672.

How avoided.

An alteration in a lease, made after the execution by some parties, but before the execution by the lessor and lessee, was held not to render it void. Lease of lands by A. to B., at the request of C., D. and E., out of which B. was to grant under-leases at the direction of C., D. and E. (the object of which under-leases was to secure a ground-rent to A. and C.), and subject to such under-leases B. was to stand possessed of the lease in trust for D. and E., who were parties to the original lease; after C., D. and E. had executed that lease, and before A. or B. had executed it, the lease was altered with the consent and privity of C. only, by an erasure, which excluded a certain portion of land inserted by mistake, but in which D. and E. had no interest. A. and B. then executed the lease. It was held, that this alteration did not render it invalid, *Hall v. Chandless*, 4 Bing. 123; 12 Moore, 316.

The general rule is, that where there appears to be an alteration in the document, it lies upon the party producing it to explain it. *Henneman v. Dickenson*, 5 Bing. 183; 2 M. & P. 289; *Johnson v. Duke of Marlborough*, 2 Stark. R. 313; *Knight v. Clements*, 8 Ad. & Ell. 215; 3 Nev. & P. 375.

Deed not
affected by
alteration, &c.
before delivery.

The validity of a deed is not affected by any alteration, erasure, or interlineation *before delivery*, but in such cases it is advisable to notice them by a memorandum on the back of the deed, and to draw the attention of the witnesses to it, *Shep. Touch.* 55. It is for a jury to decide whether the erasure or other alteration in a deed were made before the delivery of it or not, *Shep. Touch.* 69, 70; B. N. P. 267; 10 Rep. 92. See *Hemming v. Trenery*, 9 Ad. & E. 926. If an erasure or interlineation appear in a deed, and there be no evidence to show how it was done, it will be presumed to have been done before the execution, 12 Vin. Abr. p. 58; *Trowell v. Castle*, 1 Kib. 22; *Doe d. Tatham v. Catamore*, 16 Q. B. 745; 15 Jur. 728; 20 L. J., Q. B. 728. An interlineation, enlarging a power of sale, was presumed, in the absence of evidence to the contrary, to have been made at the time of the execution of the deed and not after, *Fitzgerald v. Fauconberg*, *Fitzgib.* 204. The presumption is, that an erasure or interlineation in a deed was made at the time of the execution of the deed. In ejectment the deed, on which the lessor's title depended, appeared to have an interlineation and erasure in parts not material. No evidence was given to show when the alterations were made. It was held, that it was a question for the jury whether the alterations were made before the execution of the deed, *Doe d. Tatham v. Catamore*, *ub. sup.*

Blanks in
deeds.

There appears to be no case which shows that an instrument which, when executed, is incapable of having any operation, and is no deed, can afterwards become a deed, by being completed and delivered by a stranger in the absence of the party who executed, and unauthorized

by instrument under seal. An instrument which has a blank in it, which prevents it from having any operation when it is sealed and delivered, cannot become a valid deed by being afterwards filled up. *Per Parke*, 6 Mees. & W. 215. The Brighton Railway Act, 1 Vict. c. 119, s. 155, requires the conveyance of shares to be by writing, duly stamped, to be under the hands and seals of both parties. The clause afterwards calls the instrument a deed or conveyance, and a deed of sale or transfer. It was held, that this conveyance must, in order to satisfy the statute, be by *deed*, and therefore that the instrument of transfer of shares, executed by the proprietor of such shares with the name of the purchaser in blank and handed over by him to the plaintiff, by whom, on the sale of such shares to the defendant, the defendant's name was inserted as the purchaser was void, *Hebblewhite v. M^r Morine*, 6 Mees. & W. 200.

How avoided.

In furtherance of the obvious intent of the parties even a blank may be supplied in a deed. In an action on a bond for 7,700*l.*, issue being joined on *non est factum*, the bond produced had in the obligatory part merely 7,700, without any thing to designate pounds. By the condition it appeared that the bond was given to secure various sums of money, composed of pounds. Lord Tenterden, C. J., held, that from this the word "pounds" might be intended in the obligatory part. His lordship said, "In every deed there must be such a degree of moral certainty as to leave in the mind of a reasonable man no doubt of the intent of the parties. The question in the case, whether there is in this bond that degree of moral certainty as to the species of money in which the party intended to become bound?" *Coles v. Hulme*, 8 B. & C. 568.

Blank supplied by court.

The defendant executed a deed conveying his property to trustees, to sell for the benefit of creditors, the particulars of whose demand were stated in the deed; a blank was left for one of the principal debts, the exact amount of which being subsequently ascertained was inserted in the blank the next day in the defendant's presence and with his assent. He afterwards recognized the deed as valid in various ways, as by letters, and particularly by being present when it was executed by his wife, and by joining her in a fine to enure to the uses of the deed. It was held, that the deed was valid notwithstanding the filling up of the blank after execution, *Hudson v. Revett*, 5 Bing. 368; 2 M. & P. 663. See *West v. Steward*, 14 M. & W. 47. In *Matson v. Booth*, 5 Maule & S. 223, a bond was not rendered void by the addition of an obligor, whose name was inserted with the assent of all parties. A. and B. sealed and delivered a bond to C., and after the name and addition of D. was interlined, and he also sealed and delivered the obligation with the consent of all parties. It was held to be a good obligation of all three, *Zouch v. Clay*, 2 Lev. 35; 2 Keb. 872, 881; Moor. 547, 619; Cro. Eliz. 627;

Blanks filled up after execution.

How avoided.

B. N. P. 281. So a bond was held good in which blanks were filled up with the consent of the obligors after it had been executed, *Markham v. Gomaston*, Moor. 547. A power of attorney was executed abroad, appointing B. the attorney. It was delivered to Henry B., who, according to the evidence, was the party meant to be authorized by it, and he filled up the blank with his christian name "Henry;" this was held not to invalidate the power of attorney, there being ample evidence that the party whose name was inserted was the person intended; therefore, the insertion of the name did not avoid the deed, but only left a question as to the operation of the stamp laws, which was not taken, *Eagleton v. Gutteridge*, 11 M. & W. 465. It is not necessary that an attesting witness should be able to state that blanks were filled up at the time of execution, *England v. Roper*, 1 Stark. 304.

New stamp,
when neces-
sary.

Where a deed is perfect and complete, it cannot be altered, used or re-executed without a fresh stamp, *Reed v. Deere*, 7 B. & C. 261. See *Schuman v. Weatherhead*, 1 East, 538; *Hill v. Patten*, 8 East, 373; *French v. Patten*, 1 Campb. 72. As long as a deed remains *in fieri* the stamp cannot be considered as occupied, *Spicer v. Burgess*, 2 Dowl. P. C. 719; 1 Cr. M. & R. 129. See *Murray v. Earl of Stair*, 2 B. & C. 82; *S. C.* 3 Dowl. & R. 278; *Webber v. Madocks*, 3 Campb. 1; *Matson v. Booth*, 5 Maule & S. 223; *Jones v. Jones*, 1 Cr. & Mees. 721; *Doe d. Garnons v. Knight*, 8 Dowl. & R. 349; *S. C.* 5 B. & C. 671; *Johnson v. Baker*, 4 B. & Ald. 440; *Shep. Touch.* 58; *Com. Dig. Fait (A. 3)*. See *Taw v. Bury*, 2 Dyer, 1676; 5 B. & C. 685; 8 Dowl. & R. 356.

The necessary parties met to execute a marriage settlement. Immediately after the conveying party had executed, and before the execution or assent by any other party, the father of the intended wife objected to a clause; the objection was acquiesced in, and the clause was struck out; and then the conveying party immediately re-executed, and the other parties executed; it was held, that the execution of the deed was *in fieri* only when the alteration took place, and that the alteration did not make a fresh stamp requisite; for the stamp laws were intended to provide a revenue by requiring stamps when the deed is perfected, but to make it perfect not only the delivery by the party conveying but the acceptance by the party to take is necessary. In this case, before any such acceptance the deed was altered by the consent of all parties assembled to execute, and the deed was not so far executed as to render a new stamp necessary, *Jones v. Jones*, 1 Cr. & Mees. 721; 3 Tyr. 890.

2. Breaking off the Seal.

Effect of break-
ing off seal.

45. Any breaking off the seal, or sealing it with other wax by any person, except by the party bound thereby, was formerly held to in-

validate the deed, Shep. Touch. 69. Where several parties enter into a deed of covenant, and thereby covenant for themselves severally, and the seal of one of them is afterwards broken off, this was held to avoid the deed only as to such one, *Matthenson's case*, 5 Co. 23; *sed secus* if they are jointly bound, *Ib.*; *Pigot's case*, 11 Co. 27. It is presumed that at the present day the circumstances under which the seal was destroyed would be considered, and that to destroy the deed there must be an *animus cancellandi*. For if the seal be broken off by accident, or by the obligor, or eaten off by rats or mice, it would only be reasonable that the deed should remain in force on proof that it was sealed and delivered, and thus accidentally or wrongfully cancelled. See Shep. Touch. by Preston, 70.

How avoided.
Seal of one broken off.

3. Cancellation.

46. Cancelling is literally drawing lines through a writing in the form of lattice work; but it is now used for any obliteration of a deed. Where a deed is proved to have been perfect, subsequent cancellation will not enable a party to say that it was not his deed, *Nichols v. Heywood*, Dy. 50 a; *sed secus* if it take place before issue joined, *Pigot's case*, *ub. sup.* If a deed be delivered up to the party bound, to be cancelled, the deed becomes void, unless the party delivering it recovers it before it is actually cancelled, *Cross v. Porcel*, 483; Shep. Touch. 70; so if a deed be cancelled by accident, this will not invalidate the deed, if the sense and meaning can still be made out, *Ib.* Cancellation is an equivocal act, and of no effect unless there be *animus cancellandi*, *Burtenshaw v. Gilbert*, Cowp. 49; *Hyde v. Hyde*, 3 Ch. R. 155; 1 Eq. Abr. 400. A deed which, from the declaration which accompanied the act of cancellation, was evidently done under a mistake, was held to remain in force, *Perrott v. Perrott*, 14 East, 423. The production of a bond out of the hands of the assignees of a bankrupt, who was the principal obligor to the defendant in a cancelled state, is *prima facie* evidence that it was cancelled with the consent of the obligee, *Alsager v. Close*, 10 Mees. & W. 576; 12 L. J., N. S. 50, Exch.

What is cancellation.

Delivery to be cancelled.

There is no doubt that if an estate vest in a person by deed, the cancelling of the deed, though it may create a difficulty of proving the title, yet cannot divest the estate or revest the property conveyed by the deed, *Woodward v. Aston*, 1 Ventr. 296; *Moss v. Mills*, 6 East, 148; 10 Rep. 92 b; *Bolton v. Bishop of Carlisle*, 2 H. Bl. 263; Gilb. Eq. C. 235; *Roe d. Berkeley v. Archbishop of York*, 6 East, 86; *Doe d. Lewis v. Bingham*, 4 B. & Ald. 677; *Leech v. Leech*, 2 Ch. R. 52; *Hudson's case*, Prec. Ch. 235; *Gummer v. Adams*, 13 Law J., Exch. 40. When the lessor of the plaintiff in ejectment claimed under a deed proved to have been mutilated after execution, it was held that the deed was void, but that the avoidance

Property not revested by cancellation.

How avoided.

did not divest the estate which had passed under the deed, *Doe d. Beanland v. Hirst*, 3 Stark. 60. There are cases also to show that a deed, which has been improperly cancelled as against a party to it, may be considered as against the canceller as an existing deed. A man, having executed a settlement before marriage, after the marriage obtained the deed and cancelled it, but in an action under the conveyance after his death the court allowed the cancelled deed to be read in evidence, *Beckrow's case*, Hetley, 138; *Woodward v. Aston*, 1 Vent. 296. Where it appeared upon the trial of an action of trespass for an illegal distress that the original lease was cancelled, the court considered the lease as still subsisting, because the Statute of Frauds provides, that no lease, either of freehold or for years, shall be surrendered, unless by deed or note in writing, signed by the party, or by operation of law, and in the construction of that statute the cancellation of a lease is not of itself a surrender of such lease, *Wortley v. Gregory*, 2 Yo. & J. 536; *Magennis v. MacCulloch*, Gillb. Eq. C. 235. See Bac. Abr. tit. Leases, and 8 & 9 Vict. c. 106, s. 3, *ante*, p. 866.

VII. PROOF OF DEEDS.

What is proving deeds.

47. It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, 17 & 18 Vict. c. 125, s. 26.

How effected.

Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, is permitted to be made by witnesses, and such writing, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute, 17 & 18 Vict. c. 125, s. 27. By proving a deed is to be understood the proving its execution; and a man's acknowledgment of his own deed in court has been held not sufficient, without calling the subscribing witness, *Abbott v. Plumbe*, 1 Dougl. 205; *Johnson v. Mason*, 1 Esp. N. P. C. 89; and an attorney is not protected by his privilege from proving a deed executed by his client. Where proof by witnesses is requisite, it is to be observed that if the subscribing witness is incapacitated from proving it himself, proof of his handwriting will be required, *Wood v. Drury*, 1 Ld. Raym. 734; so where the witness became blind, *Currie v. Child*, 3 Campb. 283; so in the case of lunacy, *Thomson v. Leach*, 3 Mod. 310; but mere illness has never been admitted as a sufficient cause to let in proof of the handwriting, *Harrison v. Blades*, 3 Campb. 457. If there be no subscribing witness, it may be proved by proving the handwriting of the party himself, *Grellier v. Neale*, 1 Peake, 146; so where an original was lost, a counterpart was admitted in evidence, *Burleigh v. Stibbs*, 5 T. R. 465; see also *Roe v. Davis*, 7 East, 363; and it is settled that "the best evidence" the cir-

Counterpart as evidence.

cumstances will allow must be given. Documents more than thirty years old are admissible in evidence, without proof of execution, if produced from custody which may be reasonably accounted for, though not the strictly proper legal custody, *Doe d. Jacobs v. Phillips*, L. J. 1846, Q. B. 47.

Proof.

VIII. ADMISSION OF PAROL EVIDENCE AS TO DEEDS.

48. It was a common law rule, independent of the Statute of Frauds, that parol evidence might at all times be given in support of a deed; so to explain or show the real intention of the parties; but parol evidence is not admissible to contradict, vary or add to the terms of a deed; and a writing not under seal, having received better countenance since the Statute of Frauds, the same doctrine has been extended to all written agreements.

Common law rule as to parol evidence.

49. Another general rule is, that on a question as to the construction of a deed, parol evidence is not admissible to show the intention of the parties thereto, *Palmer v. Newell*, 20 Beav. 32. Parol evidence may be admitted to enable the court rightly to understand in what sense words are used in a deed, but it is inadmissible to contradict the express provisions of a deed, *Attorney-General v. Clapham*, 4 De G., M. & G. 591. Parol evidence is admissible to repel a presumption, as where a man purchases in the name of his son, and the presumption is that it is for the benefit of the son, but for which there would be a resulting trust for the father, in such case parol evidence is admissible to rebut the resulting trust, *Lamplugh v. Lamplugh*, 1 P. Wms. 112; *Taylor v. Taylor*, 1 Atk. 386; so in the case of a purchase in the name of a stranger, the presumption is the other way, the law presuming no consideration, and without consideration a man to be a trustee, but admits parol evidence to show that he is not a trustee. See Broom's Legal Maxims, pp. 541—555, 3rd ed., as to evidence to explain an ambiguity in deeds.

Another rule.

Inadmissible against construction.

Admissible to repel a presumption.

IX. POSSESSION OF DEEDS.

50. The possession of deeds mostly affects title deeds, questions respecting which have arisen from the different interest which different persons have had in the same land. As a rule title deeds are incident to the possession; *prima facie* a person in possession of the estate under the title, that gives a freehold interest, at least has a right to the custody of them, *Ford v. Peering*, 1 Ves. jun. 72; *S. P. Strode v. Blackburne*, 3 Ves. 275; *Newton v. Beck*, 3 H. & N. 220; 4 Jur., N. S. 340; 27 L. J., Exch. 272; and the deeds will, therefore, be delivered by order of the court to the tenant for life, *Webb v. Webb*, 1 Dick. 298; *S. C. nom. Webb v. Lord Lyvington*, 1 Eden, 8, although there may be a term of years vested in trustees, *Churchill v. Small*, cited 8 Ves. 3, 323.

Title deeds incident to the possession.

- Possession.** 51. As between tenant for life and remainderman, the former shall have the title-deeds during his life ; and courts of equity will not enable the latter to take them out of his hands, particularly where the tenant for life is a parent, *Pyncent v. Pyncent*, 3 Atk. 571, recognized in *Tourl v. Rand*, 2 Br. C. C. 650; *Bowles v. Stewart*, 1 Sch. & Lef. 209; so the owner of the legal estate may hold the deeds against the equitable owner, *Parry v. Frame*, 2 B. & P. 451; so where a commission of bankrupt was superseded, the property in the documents, which had been delivered to the assignees, reverted to the original owner, *Summersett v. Jarvis*, 6 J. B. Moore, 56; *S. C.* 3 Brod. & Bing. 2; and so the rightful owner of deeds may recover the same from one to whom they have been wrongfully delivered, although the latter has given a valuable consideration for the same, *Hooper v. Ramsbottom*, 6 Taunt. 12; *S. C.* 1 Marsh. 414; but where deeds have been delivered by two into the hands of a bailee, it is not competent to the one party to take them out of his hands without the consent of the other, *May v. Harvey*, 13 East, 197. The legal tenant for life is entitled to the custody of the title-deeds, and they will not be ordered to be deposited in court merely because the tenant for life is heir-at-law, and claims the immediate reversion against the residuary devisee, *Garner v. Hannington*, 22 Beav. 627.
- As between mortgagor and mortgagee the former is entitled to the deeds when the mortgage money is paid; and if the deeds are lost, a court of equity will order an indemnity to be given, *Stokoe v. Robson*, 19 Ves. 385; *Schelmardine v. Harrop*, 6 Madd. 41.
- As between trustee and *cestui que trust*, the trustee being deemed the legal owner, is entitled to the deeds, *Estofte v. Vaugh*, 3 Dy. 277 a, recognized in *Sacararel v. Bagnoll*, Cro. Eliz. 356; *Huntingdon (Earl) v. Sir H. Mildmay*, Cro. Jac. 217; *Stockman v. Hampton*, Cro. Car. 441; *S. C.* Sir W. Jo. 377; *Welbie's case*, Noy, 145, all recognized in *Reynell v. Long*, Carth. 315; *Carter v. Carter*, 3 Kay & J. 618; but in case of a suit, trustees must bring the deeds into court, *Shaftesbury (Lady) v. Arrowsmith*, 4 Ves. 67.
- On the sale of any estate in lots, it is usual to make it a condition of the sale that the purchaser of the largest lot shall have the deeds, and enter into a covenant with the other purchasers for their production, *Dare v. Tucker*, 6 Ves. 460. See *ante*, pp. 625, 656, 804.
- One coparcener may justify detaining the deeds against the other, Vin. Abr. tit. Faits (A. a), citing 3 H. 6, 19 b; unless in the case of a partition, *Ib.*; so it is with regard to joint tenants, *Lord Buckhurst's case*, 1 Co. 2: so if a tenant in tail grant the deeds, the grantee cannot detain them against the issue, *Kelsack v. Nicholson*, Cro. Eliz. 496; so a jointress will be compelled to give up the deeds to the heir upon having her jointure confirmed, *Tourl v. Rand*, 2 Br. C. C. 652.
- As between tenant for life and remainderman.
- Owner of legal and equitable estate.
- In case of bankruptcy.
- In case of wrongful delivery.
- In the hands of a bailee.
- Mortgagor and mortgagee.
- Trustee and *cestui que trust*.
- Between different purchasers.
- Coparceners, &c.
- Tenant in tail.
- Jointress, &c.

52. Title-deeds were not considered as chattels at law, *Strode v. Blackburne, ub. sup.*; and the stealing them was not larceny, *R. v. Webster*, 2 Stra. 1133; *S. C.* 1 Leach, C. L. 14; but now by 7 & 8 Geo. 4, c. 29, stealing them is a misdemeanor; so deeds could not be taken in execution upon a judgment at law, *Francisco v. Nash*, Ca. Temp. Hardw. 53, which had been previously so decided in *Norden v. Needham*, cited Sugd. V. & P. 958 n. (1), 11th ed.; but see 1 & 2 Vict. c. 110, s. 12, by which bonds, specialties, and other securities for money belonging to the debtor may be taken under a *fi. fa.*

Possession.

Deeds not chattels.
Stealing them not punishable at common law.
Not to be taken in execution.

X. STAMP DUTY ON DEEDS.

1. The amount of stamp duty payable on conveyances is regulated by the several statutes hereinafter mentioned:—

CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, *upon the sale* of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest or claim in, to, out of, or upon any lands, tenements, rents, annuities or other property, that is to say, for and in respect of the *principal or only deed, instrument or writing* whereby the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his, her, or their direction;

Amount of stamp duty on deeds on sale of any property.

Where the purchase or consideration money thereon		£	s.	d.
or thereupon expressed does not exceed £25 ..		0	2	6
When it exceeds £25 but does not exceed £50 ..		0	5	0
„ 50	„ 75 ..	0	7	6
„ 75	„ 100 ..	0	10	0
„ 100	„ 125 ..	0	12	6
„ 125	„ 150 ..	0	15	0
„ 150	„ 175 ..	0	17	6
„ 175	„ 200 ..	1	0	0
„ 200	„ 225 ..	1	2	6
„ 225	„ 250 ..	1	5	0
„ 250	„ 275 ..	1	7	6
„ 275	„ 300 ..	1	10	0
„ 300	„ 350 ..	1	15	0
„ 350	„ 400 ..	2	0	0
„ 400	„ 450 ..	2	5	0

<i>Stamps.</i>	CONVEYANCE— <i>continued.</i>	£	s.	d.
	When it exceeds £450 but does not exceed £500 ..	2	10	0
	" 500 " 550 ..	2	15	0
	" 550 " 600 ..	3	0	0

And where the purchase or consideration money shall exceed £600, then for every £100, and also for any fractional part of £100, 10s.

And it is hereby directed, that the purchase money or consideration *shall be truly expressed and set forth in words at length* in or upon every such principal or only deed or instrument of conveyance; and where such consideration shall consist either wholly or in part of any stock or security, the value thereof respectively, to be ascertained as hereinafter mentioned, shall also be truly expressed and set forth in manner aforesaid in or upon every such deed or instrument; and such value shall be deemed and taken to be the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid.

And where the consideration or any part of the consideration shall be any stock in any of the public funds, or any government debenture or stock of the Bank of England or Bank of Ireland, or any debenture or stock of any corporation, company, society or persons or person, payable only at the will of the debtor, the said duty shall be calculated (taking the same respectively, whether constituting the whole or a part only of such consideration,) according to the average selling price thereof respectively on the day or on either of the ten days preceding the day of the date of the deed or instrument of conveyance, or if no sale shall have taken place within such ten days, then according to the average selling price thereof on the day of the last preceding sale; and if such consideration or part of such consideration shall be a mortgage, judgment or bond, or a debenture, the amount whereof shall be recoverable by the holder, or any other security whatsoever, whether payable in money or otherwise, then such calculation shall be made according to the sum due thereon for both principal and interest, 13 & 14 Vict. c. 97, Sched.

See PROGRESSIVE DUTY, *post*, p. 887.

2. *Instrument on which the Consideration is to be expressed.*

Stamps.

53. Where any lands or other property, of different tenures or holdings, or held under different titles, contracted to be sold at one entire price for the whole, are conveyed to the purchaser in separate parts or parcels, by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in such manner as the parties *shall think fit*, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto; which shall be charged with the said *ad valorem* duty in respect of the price or consideration money therein set forth (a).

Lands of different tenures sold at one sum.

And where any lands or other property, contracted to be purchased by two or more persons jointly, or by any person for himself and others, or wholly for others, at one entire price for the whole, are conveyed, in part or parcels, by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money; the principal or only deed or instrument of conveyance, of each separate part or parcel, shall be charged with the said *ad valorem* duty, in respect of the sum of money therein specified as the consideration for the same. But if separate parts or parcels of such lands or other property be conveyed to or to the use of or in trust for different persons, in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid for the lands or property thereby conveyed.

Joint purchasers.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, contracts to sell to any other person, and the same is in consequence conveyed immediately to the sub-purchaser, the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money therein mentioned to be paid, or agreed to be paid, by the sub-purchaser.

Sale by purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, contracts to sell the whole or any part or parts thereof, to any other person or persons, and the same is in consequence conveyed by the original seller to different persons in parts or parcels, the principal or only deed or instrument of conveyance of each part or parcel thereof

Sub-purchaser selling in parcels.

(a) The apportionment may be made in any manner the purchaser pleases, wholly irrespective of the relative values of the different properties, and it may be done so as to reduce the duty to a minimum; Dart. 342.

Stamps.

shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same by the person or persons to whom or to whose use or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase-money.

Sub-purchasers
to be within
48 Geo. 3.

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers within the intent and meaning of the provisions and regulations of the Act of the 48 Geo. 3, c. 149, which are to be observed with regard to the *ad valorem* duties.

Sub-purchasers
taking from
first purchaser.

But where any sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with the said *ad valorem* duty in respect of the purchase or consideration money paid or agreed to be paid by him, and is duly stamped accordingly, any deed or instrument of conveyance to be afterwards made to him of the property in question by the original seller shall be exempted from the said *ad valorem* duty, and be charged only with the ordinary duty on deeds or instruments of the same kind not upon a sale.

Joint vendors.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, are conveyed to the purchaser, or as he directs, in and by one and the same deed or instrument, such deed or instrument shall be charged with the said *ad valorem* duty in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid for the same, 55 Geo. 3, c. 184, Sched. Part I., tit. CONVEYANCE.

Consideration,
mortgage
money.

Where any lands or other property shall be sold and conveyed subject to any mortgage, wadset, or bond or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration money or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding the purchaser shall not be or become personally liable, or shall not undertake or agree to pay the same, or to indemnify the vendor or any person against the same, 16 & 17 Vict. c. 59, s. 10 (a).

Which to be
the principal
of several in-
struments.

And to prevent doubts respecting what shall be deemed the principal deed or instrument of conveyance in certain cases, it is by the 55 Geo. 3, c. 184, Sched. Part I., tit. CONVEYANCE, declared, that where any lands or hereditaments in England are conveyed by bargain and sale inrolled, and also by lease and release, or feoffment, with or without any such letter or letters of attorney therein contained, the release or feoffment shall be deemed the principal

(a) This provision was made in consequence of the decision in the case of *Marquis of Chandos v. Commissioners of Inland Revenue*, 6 Exch. 464.

deed, and the bargain and sale shall be charged only with the duty thereby imposed on deeds in general. But the same shall not be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release or feoffment.

Stamps.

And where any copyhold or customary estate is conveyed by a deed of bargain and sale by the commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will, or by act of parliament or otherwise, when a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

Bargain and sale of copyholds.

And in other cases of copyhold or customary estates, the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument.

Surrender of copyholds.

And copies of court roll made after the 31st August, 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th October, 1808, shall be charged with the said *ad valorem* duties.

Copies of court roll.

And grants, and copies of court roll of grants, of copyhold or customary estates for a life or lives are to be charged, as well as those for any greater interest.

Copyholds for life.

And where upon the sale of any annuity or other right not before in existence (*a*), the same is not created by actual grant or conveyance, but only secured by bond, warrant of attorney, covenant, contract or otherwise, the bond or other instrument by which the same is secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance.

Annuity secured by bond.

And in the case of leases or tacks, where a yearly rent of 20*l.* or upwards is reserved as part of the consideration for the same, there shall be charged thereon a further duty. See tit. LEASE, *post*.

Part of consideration a rent.

And where there are several deeds, instruments, or writings, for completing the title to the property sold, such of them as are not liable to the said *ad valorem* duty shall be charged with the duty to which the same may be liable under any general or particular description of such deeds, instruments, or writings, contained in the schedule.

Several assurances.

(*a*) Where a purchaser borrowed money on annuity, to complete the purchase of some copyhold lands, and the copy of court roll, admitting the surrenderee, stated that the annuity was to be secured by the bond of the purchaser, and subject thereto to the use of the purchaser, it was held that this copy required an *ad valorem* stamp, as on a conveyance, without any reference to the annuity, whether the same had been already or was to be granted, this not being an instrument by which any annuity was created, so as to bring it within the Act 55 Geo. 3, c. 184. *Doe v. Reynolds*, 2 Nev. & Man. 383.

Stamps.

Option as to
principal in-
struments.

And where in any case not expressly provided for by 55 Geo. 3, c. 184, of several deeds, instruments or writings, a doubt arises which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments or writings on which the doubt arose, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

Conveyance
containing
other matter.

And where any deed or instrument, operating as a conveyance on the sale of any property, operates also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or also contains any other matter or thing besides what is incident to the sale and conveyance of the property sold, or relates to the title thereto, every such deed or instrument shall be charged, in addition to the duty to which it is liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp duty as any separate deed containing the other matter would have been chargeable with, exclusive of the progressive duty, 55 Geo. 3, c. 184, Sched. tit. CONVEYANCE.

Case on last
provision.

By the deed of settlement of a joint stock company the shares were made transferable, and the directors were empowered to regulate the transfer, and to require, in respect of such transfer, a covenant from the transferee to observe the company's regulations, &c. as to holders of shares. The directors prescribed a form of transfer under seal, by which the shareholder conveyed his shares to the transferee, to hold, subject to the regulations and covenants contained in and resolved upon pursuant to the deed of settlement, and the transferee covenanted with the party conveying, and also separately with trustees on behalf of the company, to abide by and perform all the said regulations, &c.; it was held, that such transfer required an *ad valorem* stamp duty, and not an additional stamp under stat. 55 Geo. 3, c. 186, Sched. Part I. tit. CONVEYANCE, as containing matter besides that which was incident to the sale and conveyance of the property sold, *Wolseley v. Cox*, 2 Q. B. 321.

Releases on
repurchase of
annuity.

54. By the 55 Geo. 3, c. 184, s. 31, releases and other conveyances of annuities or rent-charges made in the original grant thereof, subject to be redeemed or repurchased, shall, on the repurchase thereof, be exempted from the *ad valorem* duty imposed on conveyances on the sale of any property, and shall be charged only with the ordinary duty on deeds or instruments of the like kind, not upon a sale.

Where prop-
erty is sold in
consideration
of a redeem-
able annuity
the redemption
money to be

55. By 17 & 18 Vict. c. 59, s. 11, in any case where property shall be sold and conveyed in consideration of any rent-charge or annuity, or any annual or periodical payment to be made permanently or for any indefinite period, so that the total amount of the money to be paid for such property cannot be previously ascertained, which rent-charge,

annuity or other payment shall be made, subject to redemption or purchase, upon terms and conditions specified in the deed or instrument whereby the property sold shall be conveyed to or vested in the purchaser or any person by his direction, the money or the consideration mentioned in the said deed or instrument as that on payment or transfer, delivery or satisfaction of which the said rent-charge, annuity, or other payment shall be redeemed or purchased, or repurchased, or shall cease to be payable, shall be deemed to be the purchase money or consideration on the sale of the said property so sold and conveyed, and in respect of which last-mentioned purchase money or consideration, the *ad valorem* duty shall be chargeable; and where any such last-mentioned consideration shall consist wholly or in part of any stock or security mentioned in the Act 13 & 14 Vict. c. 97, the value thereof shall be ascertained as in such act is in that behalf provided; and where any such annuity, rent-charge, or other payment aforesaid shall be made, subject to redemption or purchase, or repurchase or discontinuance, upon payment or satisfaction of any money or value to be ascertained or calculated in manner provided in the said deed or instrument, the amount of such money or value shall, for the purpose of charging the said *ad valorem* duty, be ascertained or calculated as in such deed or instrument shall be so provided (a).

Stamps.
deemed purchase-money.

56. A conveyance of any kind or description whatever in England or Ireland, (not being a lease for years,) in consideration of an annual sum payable in perpetuity or for any indefinite period, whether fee-farm or other rent, or otherwise, is charged with the same duty as on a lease for a term exceeding 100 years, at a yearly rent equal to such annual sum. See *post*, LEASE; 17 & 18 Vict. c. 83, Sched. tit. CONVEYANCE.

Where consideration an annuity for an indefinite period.

57. Where any conveyance described in the schedule to the Act 17 & 18 Vict. c. 83, shall be made partly in consideration of such annual sum as therein mentioned, and partly in consideration of a sum of money or stock as mentioned under the head or title of "Conveyance" in the schedule to the Act 13 & 14 Vict. c. 97, such conveyance shall be chargeable with the *ad valorem* duties granted by the said acts respectively in respect of each of the said considerations; and in any case where any deed or instrument which shall be chargeable with any *ad valorem* stamp duty in respect of any sum of money yearly or in gross, or any stock or security therein mentioned, shall be made also for any further or other valuable consideration, such deed or instrument shall be chargeable (except where express provision to the contrary is or shall be made in any act of Parliament) with such further stamp duty as any separate deed or instrument made for such last-mentioned consideration alone would be chargeable with, except progressive duty, 17 & 18 Vict. c. 83, s. 16.

Deeds made for several valuable considerations to be chargeable in respect of each.

(a) 16 & 17 Vict. c. 59, s. 11. This provision was made in consequence of the decision in *Re Stamp Duty in Gill's Conveyance*, 8 Exch. 376; 22 Law. J., Exch. 376.

Stamps.

Stamps on
schedules to
deeds.

58. SCHEDULE, inventory or catalogue of any lands, hereditaments, or heritable subjects, or of any furniture, fixtures, or other goods or effects, or containing the terms and conditions of any proposed sale, lease, or tack, or the conditions and regulations for the cultivation or management of any farm lands or other property leased or agreed to be leased, or containing any other matter or matters of contract or stipulation whatsoever, *which shall be referred to in or by and be intended to be used and given in evidence as part of or as material to any agreement, lease, tack, bond, deed, or other instrument charged with any duty, but which shall be separate and distinct from and not indorsed on or annexed to such agreement, lease, tack, bond, deed, or other instrument* ;

Where any such schedule, inventory or catalogue shall be so referred to in or by any such agreement, lease, tack, bond, deed or other instrument chargeable with any stamp duty not exceeding 10s., *exclusive of progressive duty*

The same duty (exclusive of progressive duty) as shall be so chargeable on such agreement, lease, tack, bond, deed or other instrument.

And where any such schedule, inventory or catalogue shall be referred to in or by any lease, tack, bond, deed or other such instrument as aforesaid, chargeable with any stamp duty exceeding 10s., *exclusive of progressive duty* ..

0 10 0

And if in any of the said cases such schedule, inventory or catalogue shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words (13 & 14 Vict. c. 97, Sched.) ..

A further progressive duty of the same amount as the duty hereinbefore charged thereon respectively.

Public maps and documents not liable to stamp duty by reason of their being referred to in deeds.

59. The stamp duties imposed upon any schedule, inventory, or catalogue by the 55 Geo. 3, c. 184, and 13 & 14 Vict. c. 97, do not extend and are not to be deemed to have extended to any public map, plan, survey, apportionment, allotment, award, or other parochial or public document or writing whatsoever made under it, or in pursuance of any act of Parliament, and deposited or kept for reference in any registry or in any public office, or with the public books, papers, or writings of any parish, by reason of any such document or writing as aforesaid being referred to in or by any deed or instrument whatever, provided that such document or writing be not indorsed on or annexed to such deed or instrument, 17 & 18 Vict. c. 83, s. 22.

For removing doubts regarding progressive duties.

60. The Act 13 & 14 Vict. c. 97, s. 11, recites that the several acts then in force relating to the stamp duties as well as by that act, certain stamp duties called progressive duties are imposed upon deeds and instruments in respect of certain quantities of words contained therein, together with any schedule, receipt, or other matter put or indorsed

Stamps.

thereon or annexed thereto; and that doubts are entertained whether such progressive duties are chargeable on any deed or instrument in respect of the words contained in any other deed or instrument liable to stamp duty and duly stamped which may be put or indorsed upon, or annexed to, or referred to in or by such first-mentioned deed or instrument, and that it is expedient to remove such doubts: it is, therefore, declared and enacted, that the said progressive duties shall not be deemed or held to be or to have been imposed or chargeable upon any deed or instrument in respect of the words or any quantity of the words contained in any other deed or instrument liable to stamp duty and duly stamped which may be or may have been put or indorsed upon or annexed to such first-mentioned deed or instrument, or which may be or may have been in any manner incorporated with or referred to in or by the same.

Progressive duties not to be charged on deeds or instruments in respect of other deeds or instruments duly stamped and referred to therein.

PROGRESSIVE DUTY; (that is to say:)—Where any deed or instrument of any description whatever chargeable with any stamp duty either under this schedule or under any other act or acts now in force, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, there shall be charged the further *progressive* duty following; (that is to say,)

£	s.	d.	Amount of progressive duty.
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Where such deed or instrument shall be chargeable with any *ad valorem* stamp duty or duties not exceeding in the whole the sum of ten shillings, a further *progressive* duty equal to the amount of such *ad valorem* duty or duties.

And in every other case (*except where any other progressive duty is by this schedule expressly charged thereon*), a further progressive duty of

0	10	0
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Provided always, that nothing herein contained shall extend to charge the said *progressive* duty in any case in which express provision is made by any such act or acts as aforesaid for charging a certain duty on every skin, sheet, or piece of vellum, parchment, or paper in or upon which any deed or instrument shall be contained or written, or to charge with progressive duty any description of deed or instrument not chargeable with *progressive* duty under any act or acts now in force, or to charge any deed or instrument with any higher rate or amount of *progressive*

COVENANT—*continued.*

£	s.	d.	Stamps.
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VEYANCE in the Schedule to 13 & 14 Vict. c. 97) for the conveyance, assignment, surrender or release of such estate, right or interest, or for the title to, or quiet enjoyment, freedom from incumbrances, or further assurance of, the same estate, right or interest, or otherwise by way of indemnity in respect of the same, or for the production of the title deeds or muniments of title relating thereto, or for all or any of those purposes;

Where the *ad valorem* duty on the purchase money or consideration or on the mortgage money shall not exceed the sum of 10s. ..

A duty equal to the amount of such *ad valorem* duty.

And where the same shall exceed that amount ..

0 10 0

And see PROGRESSIVE DUTY, *ante*, p. 887.

COVENANT.—Any deed containing a covenant for the payment or repayment of any sum or sums of money, or for the transfer or re-transfer of any share or shares in the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of any other company or corporation, in any case where a mortgage, if made for the like purpose, would be chargeable under the Schedule to 13 & 14 Vict. c. 97, with any *ad valorem* duty exceeding in amount the sum of 1l. 15s. ; or for the payment of any annuity, or any sums at stated periods in any case where a bond for the like purpose would be chargeable with any such duty

The same *ad valorem* duty as on a mortgage or bond respectively for the like purpose.

For the duty thereon, see BOND or MORTGAGE.

And see PROGRESSIVE DUTY, *ante*, p. 887.

Provided always, that where any covenant shall be made as an additional or further security for the payment or repayment, transfer or re-transfer of any sum or sums of money, or any share or shares in any of the said stocks or funds, or for the payment of any annuity or sums at stated periods, at the same time or already or previously secured by any bond or other instrument mentioned and referred to by the deed containing such covenant, and chargeable with, and which shall have paid the proper *ad valorem* duty under the head of BOND or MORTGAGE, or (as respects any annuity)

*Stamps.*COVENANT—*continued.*

£ s. d.

under the head of CONVEYANCE, respectively in the Schedule to 13 & 14 Vict. c. 97, or under any act or acts in force at the date thereof, in respect of the same sum or sums, share or shares, the said *ad valorem* duty hereby charged shall not be payable upon or in respect of such covenant; and if required for the sake of evidence the deed containing such covenant shall on the same and such bond or other instrument being produced duly stamped in other respects, be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty hereby charged.

Exemption from the preceding ad valorem duty, but not from any other duty to which the same may be liable.

Any covenant contained in any deed chargeable with any duty under the head of MORTGAGE in the Schedule to 13 & 14 Vict. c. 97, or in any deed exempted from the ad valorem duty on mortgages by the Act 3 Geo. 4, c. 117, such deeds hereby exempted operating as a security by way of mortgage or as a transfer, assignment, disposition or assignation hereinafter charged for the same sum or sums of money, or share or shares in any of the said stocks or funds, which is or are the subject of such covenant.

Also any covenant contained in any deed chargeable with any duty under the head of SETTLEMENT in the Schedule to 13 & 14 Vict. c. 97, in respect of the same sum or sums of money, or share or shares in any of the said stocks or funds, which is or are the subject of such covenant, 13 & 14 Vict. c. 97, Sched. tit. COVENANT.

Stamps on
bonds.

63. BOND in England or Ireland, and personal bond in Scotland, given as a security for the payment of any definite and certain sum of money :

Not exceeding 50 <i>l.</i>	..	..	..	0	1	3
Exceeding 50 <i>l.</i> and not exceeding 100 <i>l.</i>	..	..	..	0	2	6
Exceeding 100 <i>l.</i> and not exceeding 150 <i>l.</i>	..	..	..	0	3	9
Exceeding 150 <i>l.</i> and not exceeding 200 <i>l.</i>	..	..	..	0	5	0
Exceeding 200 <i>l.</i> and not exceeding 250 <i>l.</i>	..	..	..	0	6	3
Exceeding 250 <i>l.</i> and not exceeding 300 <i>l.</i>	..	..	..	0	7	6

BOND—*continued.*

And where the same shall exceed 300*l.*, then for every 100*l.* and also for any fractional part of 100*l.*

£	s.	d.	Stamps.
0	2	6	

BOND in England or Ireland, and personal bond in Scotland, given as a security for the repayment of any sum or sums of money *to be thereafter lent, advanced, or paid, or which may become due upon an account current*, together with any sum already advanced or due, or without, as the case may be;

Where the money secured or to be ultimately recoverable thereupon *shall be limited* not to exceed a given sum

The same duty as on a bond for such limited sum.

And where the total amount of the money secured or to be ultimately recoverable thereupon *shall be uncertain, and without any limit*

The same duty as on a bond for a sum equal to the amount of the penalty of such bond.

And where there shall be no penalty of the bond in such last-mentioned case, such bond shall be available for such an amount only as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.

BOND in England or Ireland, and personal bond in Scotland, given as a security for the transfer or re-transfer of any share in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the *East India* Company, or of the South Sea Company, or of *any other* company or corporation ..

The same *ad valorem* duty as on a bond for a sum of money equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the bond, or on either of the ten days preceding, or if there shall not have been any known sale on any of such days, then on the latest day preceding on which there shall have been a known sale.

Heritable BOND in Scotland for any of the purposes aforesaid.—See MORTGAGE.

BOND in England or Ireland, and personal bond in Scotland, given as a security for the payment of any sum of money, or for the transfer or re-transfer of any share in any of the stocks or funds before mentioned, *which shall be secured also by a mortgage or wadset*, or other instrument or writing hereinafter charged with and which shall have paid the same duty as a mortgage or wadset, or for the performance of covenants contained in such

Stamps.

BOND—continued.

£ s. d.

mortgage or other instrument or writing, or for both these purposes, *provided such mortgage, wadset, or other instrument or writing shall bear even date with and be referred to in such bond* ;

Where the sum of money or the value of the stock or funds secured shall not exceed 800*l.* ..

{ The same *ad valorem* duty as on a mortgage or wadset for securing the like amount or value.

And where such sum of money or value shall exceed 800*l.*

1 0 0

BOND in England or Ireland, and personal or heritable bond in Scotland, given as an *additional or further security* for the payment of any sum or sums of money, or for the transfer or re-transfer of any share in any of the stocks or funds before mentioned, previously secured by a bond, mortgage, or other security *therein referred to*, and which shall have paid the proper *ad valorem* duty on bonds or mortgages imposed by law at the date thereof ;

Where the sum of money or the value of the stock or funds secured shall not exceed 1,400*l.* ..

{ The same *ad valorem* duty as on a bond or mortgage for securing the like sum or value.

And where such sum of money or the value of the stock or funds secured shall exceed 1,400*l.*

1 15 0

BOND.—Any TRANSFER or ASSIGNMENT, disposition or assignation of any such bond as aforesaid, and which shall have paid the proper *ad valorem* duty on bonds ;

Where the principal money or stock secured by the bond shall not exceed in amount or value in the whole the sum of 1,400*l.*

{ The same duty as on a bond for the total amount or value of such principal money or stock.

And in every other case such transfer, assignment, disposition or assignation shall be chargeable with the duty of

1 15 0

And see PROGRESSIVE DUTY, *ante*, p. 887.

BOND in England or Ireland, and personal or heritable bond in Scotland, given as the *only or principal* security for the payment of any *annuity upon the original creation and sale thereof*

{ The same *ad valorem* duty as on a conveyance upon sale in consideration of the sum or value given or agreed to be given for the purchase of such annuity.

For the duty payable, see CONVEYANCE upon the sale of property, *ante*, p. 879.

BOND in England or Ireland, and personal bond in Scotland, given as a *collateral or auxiliary security* for the payment of any *annuity upon the original creation and sale thereof*, where the same shall be granted or conveyed or secured by any other deed or instrument liable to and charged with the *ad valorem* duty imposed by law on conveyances upon the sale of any property ;

Where such *ad valorem* duty shall not exceed 20s. such bond shall be chargeable with a stamp duty of equal amount with the said *ad valorem* duty.

And where such *ad valorem* duty shall exceed 20s. such bond shall be chargeable with the duty of 1 0 0

BOND in England or Ireland, and personal or heritable bond in Scotland, given as a security for the payment of any *annuity (except upon the original creation and sale thereof)*, or of any sum or sums of money at stated periods (*not being interest for any principal sum, nor rent reserved or payable upon any lease or tack*), for any *definite and certain term*, so that the total amount of the money to be paid can be previously ascertained

The same *ad valorem* duty as on a bond of the like nature for the payment of a sum of money equal to such total amount.

BOND in England or Ireland, and personal or heritable bond in Scotland, given as a security for the payment of any *annuity (except as aforesaid)*, or of any sum or sums of money at stated periods (*not being interest for any principal sum, nor rent reserved or payable upon any lease or tack*), for the term of life or any other *indefinite period*, so that the whole money to be paid cannot be previously ascertained ;

Where the annuity or sum secured shall not exceed 50*l.* per annum 1 0 0

And where the same shall exceed 50*l.* and not exceed 100*l.* per annum 2 0 0

And where the same shall exceed 100*l.* per annum, then for every 100*l.* per annum and also for any fractional part of 100*l.* per annum 2 0 0

But where there shall be both a personal and heritable bond in Scotland in separate deeds of the same date for securing any such annuity or sums payable at stated periods, and the *ad*

Stamps.

BOND—*continued.*

£ s. d.

valorem duty above charged thereon shall amount to 2l. or upwards, the heritable bond only shall be charged with the *ad valorem* duty, and the personal bond shall be charged only with a duty of

1 0 0

BOND of any kind or description *given for any other purpose than as aforesaid*

{ The duty chargeable thereon by any act or acts now in force.

Provided always, and it is hereby declared, that no such bond as last mentioned shall be charged or chargeable under this or any other act or acts with any greater amount of stamp duty than the *ad valorem* duty hereinbefore charged upon a bond given for the payment of a *definite and certain* sum of money of *the same amount as the penalty* of such bond.

And in all the said several cases of BOND see PROGRESSIVE DUTY, 13 & 14 Vict. c. 97, Sched., *ante*, p. 887.

64. WARRANT OF ATTORNEY (with or without a release of errors) to confess and enter up a judgment in any of her Majesty's courts at Westminster or in Ireland, or in any of the courts of the counties palatine of Lancaster and Durham, or in any other court of record holding pleas, where the debt or damage amounts to 40s., which shall be given as a security for the payment of any sum or sums of money, or for the transfer of any share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of *any other* company or corporation (a)

{ The same duty as on a bond for the like purpose.

Save and except where such payment or transfer shall be already secured by a bond, mortgage, or other security which shall have paid the proper ad valorem duty on bonds or mortgages imposed by law at the date thereof, exceeding in amount the sum of 5s.; and also except where the warrant of attorney shall be given for securing any sum or sums of money exceeding 200l. for which the person giving the same shall then be in actual custody under an

(a) See *ante*, p. 890; 13 & 14 Vict. c. 97, Sched.

WARRANT OF ATTORNEY— <i>continued.</i>	£	s.	d.	Stamps.
<i>arrest on mesne process or in execution; and</i>				
in those excepted cases a duty of	0	5	0	
WARRANT OF ATTORNEY <i>not otherwise charged</i> in				
the above Schedule	1	15	0	

65. A deed of any kind whatsoever not otherwise charged, nor expressly exempted from all stamp duty, requires a stamp of 1*l.* 15*s.* And where the same together with any schedule, receipt or other matter put or endorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, a further progressive duty of 10*s.* See 55 Geo. 3, c. 184, Sched. Part I., tit. DEED; 13 & 14 Vict. c. 97, Sched. tit. PROGRESSIVE DUTY, *ante*, p. 887.

Stamp on deeds not otherwise charged.

The stamps on several deeds have already been mentioned generally under different heads. As to stamps on LEASES, MORTGAGES and SETTLEMENTS, see the Prefaces to those respective heads.

XI. GENERAL REGULATIONS AS TO STAMPING DEEDS.

66. Where any deed or instrument liable by law to any stamp duty shall be signed or executed by any person before it shall be duly stamped, then and in every such case the whole or (as the case may be) the deficiency of the stamp duty payable upon or in respect of such deed or instrument, shall also be paid and payable, over and above the said duty or deficiency of duty by a penalty of ten pounds; and where the whole amount of the duty or deficiency of duty, as the case may be, to be denoted by the stamp or stamps required to be impressed on such deed or instrument when the same shall be brought to be stamped shall exceed the sum of ten pounds, there shall be paid by way of penalty, in addition to the said sum of ten pounds, interest on the said duty or deficiency of duty computed at the rate of five pounds per centum per annum from the date or first signing or execution of such deed or instrument; but if such interest shall exceed in amount the said duty or deficiency of duty, then there shall be paid by way of penalty, in addition to the said duty or deficiency of duty, and the said sum of ten pounds, and in lieu of the said interest, a sum equal to the amount of the said duty or deficiency of duty; upon payment of the said duty or deficiency of duty, and of the penalty, the commissioners are to cause such deed or instrument to be duly stamped with a stamp or stamps for denoting the payment of such duty or deficiency, and also with a stamp for denoting the payment of a penalty, and no such deed or instrument shall be pleaded or given in evidence, or admitted to be good or available in law or equity, until the same shall be duly stamped in manner aforesaid: where it shall appear to the commissioners upon oath or otherwise, to their

Commissioners of inland revenue may assess stamp duty;

may remit the penalty on stamping

Stamps.

deeds, &c.
within twelve
months after
the signing
thereof.

Not to extend
to instru-
ments for the
stamping of
which after
the signing
thereof special
provision is
made, or to
cases where
the stamping
is by law pro-
hibited.

Commissioners
may stamp in-
struments exe-
cuted abroad,
without any
penalty, within
two months
after their
arrival in the
United King-
dom.

Commissioners
may determine
what stamp
duty is payable.

satisfaction, that any deed or instrument hath not been duly stamped previously to being signed or executed, by reason of accident, mistake, inadvertency, or urgent necessity, and without any wilful design or intention to defraud or to evade or delay the payment of such duty, then and in any such case, if such deed or instrument shall within twelve calendar months after the first signing or executing of the same by any person be brought to the said commissioners in order to be stamped, and the stamp duty chargeable thereon by law shall be paid, the said commissioners, if they shall think fit, may remit the whole or any part of the penalty payable on stamping such deed or instrument, and may cause such deed or instrument to be duly stamped, upon payment of the whole, or, as the case may be, the deficiency of the stamp duty chargeable thereon by law, and either with or without any portion of the said penalty; and thereupon every such deed or instrument shall be as valid and available in the law as it would have been if it had been duly stamped before the signing or executing of the same: the act does not extend to any deed or instrument for the stamping of which after the signing or execution thereof provision is specially made by any law then in force, or to any deed or instrument the stamping of which after the signing or execution thereof is expressly prohibited or restricted by any such law as aforesaid, or to repeal, alter, or affect any such provision, prohibition, or restriction, 13 & 14 Vict. c. 97, s. 12.

67. The said commissioners may order and direct any deed or instrument which shall have been or shall or may be signed or executed by any party thereto at any place out of the United Kingdom to be duly stamped, upon payment of the proper stamp duty payable thereon, and without payment of any additional duty or penalty, if such deed shall be brought to the said commissioners to be stamped as aforesaid within two calendar months from the time when the same shall have been received in the United Kingdom, and if proof shall be first made to the satisfaction of the said commissioners of the facts aforesaid, *Ib.* s. 13.

68. When any deed liable to stamp duty, whether previously stamped or otherwise, shall be presented to the said commissioners at their office, and the party presenting the same shall desire to have their opinion as to the stamp duty with which such deed in their judgment is chargeable, and shall pay to the said commissioners a fee of ten shillings the said commissioners may assess and charge the stamp duty to which in their judgment such deed is liable, and upon payment of the stamp duty so charged by them, or, in the case of a deed insufficiently stamped, of such a sum as, together with the stamp duty already paid thereon, shall be equal to the duty charged, and upon payment also of the amount, if any, payable by way of penalty on stamping such deed or instrument, may stamp such deed or instru-

ment with the proper stamp or stamps denoting the amount of the duty so paid, and thereupon, or if the full stamp duty to which in the judgment of the said commissioners such deed shall be liable shall have been previously paid and denoted upon the same in manner aforesaid, the said commissioners shall impress upon such deed or instrument a particular denoting stamp to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid, and every deed upon which the same shall be impressed shall be deemed to have been duly stamped, and shall be receivable in evidence in all courts of law or equity, except that such last-mentioned stamp shall not be impressed upon any deed or instrument chargeable with *ad valorem* duty under or by reference to the head of bond or mortgage in the schedule to that act where the same is made as a security for the payment or transfer or re-transfer of money or stock without any limit as to the amount thereof; but the act does not authorize the said commissioners to stamp as last aforesaid any probate of a will or letters of administration, or to stamp as last aforesaid any deed after the signing or execution thereof in any case in which the stamping thereof is expressly prohibited by any law in force, *Ib.* s. 14.

If the party presenting such deed or instrument to the said commissioners as aforesaid for their opinion shall declare himself dissatisfied with the determination made by them in that behalf, such party, upon paying the amount of the stamp duty according to such determination, and depositing with the said commissioners the sum of forty shillings for costs and charges to be paid by him, to abide the event of the decision, may require the said commissioners to state specially and to sign the case on which the question with respect to such stamp duty arose, together with their determination thereupon, which case the said commissioners are hereby required to state and sign accordingly, and to cause the same to be delivered to the party making such request as aforesaid, in order that he may appeal against such determination to the Court of Exchequer, and upon the application of the said party (due notice thereof being given to the solicitor of inland revenue), such court is to determine the said appeal, and decide as to the stamp duty with which such deed is chargeable, *Ib.* s. 15.

69. Any person may present to the said commissioners any deed, and, upon payment of the fee of ten shillings, may require their opinion whether or not the same is chargeable with any stamp duty, and if they shall be of opinion that such deed is not chargeable with any stamp duty, they are to impress thereon a particular denoting stamp, which shall signify and denote that such deed is not chargeable with any stamp duty, and every such deed so stamped shall be receivable in evidence in all courts of law and equity. If the said commissioners shall assess any stamp duty in respect of any such deed, the party

Party dissatisfied with the determination of the commissioners as to the stamp duty chargeable may appeal to the Court of Exchequer, and the duty shall be paid according to the decision of the court.

Commissioners may adjudge deeds not liable to stamp duty.

Stamps.

Commissioners before assessing stamp duty upon any deed may require proof that the facts upon which the duty depends are truly stated.

paying such duty may appeal against the same to the Court of Exchequer, which is to decide whether the deed is chargeable with any and what stamp duty, 16 & 17 Vict. c. 59, s. 13.

70. On application to the commissioners to assess stamp duty on a deed, or to impress any deed with the stamp denoting the payment of the duty, or that any deed is not liable to duty, the commissioners may require evidence by affidavit of the quantity of words contained in such deed, and whether or not the consideration and other matters upon which the stamp duty shall depend is truly set forth therein, and the commissioners may refuse to stamp any such deed or counterpart thereof with the denoting stamp, except on payment of the full duty, which would be chargeable if such matters had been truly set forth thereon, 17 & 18 Vict. c. 83, s. 17.

The affidavit is not to be used for any other purpose, and every person, upon payment of such full stamp duty will be relieved from any penalty incurred by reason of the omission to state truly in such deed the matters aforesaid, *Ib.* s. 18.

Deeds, &c., may be stamped either in London or Dublin.

71. Any deed, agreement or other instrument which relates wholly to real or personal property in Ireland, or to any matter or thing (other than the payment of money) to be done in Ireland, and also any deed, agreement or other instrument which relates to any real or personal property situate elsewhere than in Ireland, or to any matter or thing (other than the payment of money) to be done elsewhere than in Ireland, may and shall, without regard to the place where the property, matter or thing, to which the same may relate, may be situate or may be to be done, be stamped with such duty or duties as the same may be liable to, either at the stamp office in London or at the stamp office in Dublin, according as the same shall for that purpose be presented at either of the said offices, 13 & 14 Vict. c. 97, s. 17.

Provision for stamping documents at the trial.

72. Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer of the court, whose duty it is to read such document, to call the attention of the judge to any omission or insufficiency of the stamp, and the document, if unstamped or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty and the penalty required by statute, together with the additional penalty of one pound, shall have been paid, 17 & 18 Vict. c. 125, s. 28.

Such officer of the court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty, payable upon or in respect of such document, and of the penalty required by statute and of the additional penalty of one pound, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence saving all just exceptions on other grounds, *Ib.* s. 29.

DEFEASANCES.

- | | |
|--|---|
| <p>1. <i>Definition.</i>
 2. <i>What applicable to.</i>
 3. <i>Proper Words in a Defeasance.</i></p> | <p>4. <i>On Warrant of Attorney, how to be written.</i></p> |
|--|---|

SECT. 1. A defeasance is a collateral deed which defeats the operation of some other deed, and differs from the common condition of a bond only in that the one is inserted in the deed itself, and the other is made as a separate deed, *Shep. Touch. pp. 396–398; 2 Bl. Comm. 327.*

Definition.

2. Defeasances are applicable either to freehold estates or to terms of years, or other executory interests. In regard to freehold estates, the defeasance is merely a condition annexed to the estate on its creation; but the defeasance must be made at the same time with the feoffment, grant, release or other deed; and this deed so executed was by the ancient law considered as part of it, and therefore indulged, *Co. Litt. 236.* A defeasance is, however, now seldom resorted to, as it is much preferable to make the condition apparent in the deed, so that the deed shall be complete in itself, *Watk. Pr. 196.* In regard to freehold estates a defeasance is merely a condition annexed to the estate in its creation. The defeasance must be made at the same time that the grant or conveyance is made, and must form part of that transaction, *2 Prest. Conv. pp. 166, 199.* But executory interests, as bonds, judgments, and terms of years, although granted absolutely, may be defeasanced at any time by an instrument of as high a nature as the one creating the obligation, *2 Saund. 47; Cowp. 47.*

What applicable to.

3. Every defeasance must contain proper words, as that the thing shall be void, *2 Salk. 575; 2 Wms. Saund. 48, n. 1.* A covenant not to sue a sole obligor is a release. An agreement not to sue an obligor within a particular time, or not to sue one of several joint and several obligors, is merely a defeasance, *Carth. 64; Shep. Touch. by Prest. 398.* The general words of a defeasance may be restrained by a particular recital in other parts of the same instrument, *2 Wms. Saund. 47.* If a defeasance recite the bond, recognizance or other deed, it must be recited truly; as if the deed is recited to be made on the 14th of May, and bears date the 8th of May, the defeasance is in that case void, *Shep. Touch. 397; see ante, p. 851.*

Proper words in a defeasance.

4. Every attorney or other person who shall prepare any warrant of attorney to confess judgment which is to be subject to any defeasance, shall cause the defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeasance, *Reg. Gen., Hil. T. 1853, No. 271, 1 Ell. & Bl. App. VI. See 17 & 18 Vict. c. 36, s. 2, ante, p. 473; 3 Geo. 4, c. 39, s. 4.*

On warrant of attorney, how to be written.

No.
CCCLXXV.

*On a Warrant
of Attorney.*

No. CCCLXXV.

*Warrant of Attorney (a) to enter up Judgment with Defeasance
endorsed thereon.*

To and gentlemen attorneys of her Majesty's Court of Queen's Bench [*or "C. P." or "Exch. of Pleas"*] at Westminster jointly and severally or to any other attorney of the said court These are to desire and authorize you the attorneys above named or any one of you or any other attorney of the said court to appear for me C. D. of at any time in the said court and then and there to receive a declaration for me in an action for the sum of £ for money found to be due and payable from me to A. B. on an account stated between us [*or if a bond was given on a bond or obligation made and entered by me the said C. D. to A. B. in the penal sum of £]* at the suit of the said A. B. his executors or administrators And thereupon to confess the same action or else to suffer judgment by nil dicit or otherwise to pass against me therein and to be thereupon forthwith entered up against me of record in the said court for the said sum of £ besides costs of suit as between attorney and client including costs of registering the judgment And I the said C. D. do hereby further authorize and empower you the said attorneys or any one of you after the said judgment shall have been entered up as aforesaid for me and in my name and as my act and deed to sign seal and execute a good and sufficient release in law to the said A. B. his said executors or administrators of all and all manner of error and errors and proceedings in error and all benefit and advantage thereof and all defects and imperfections whatsoever had made committed done or suffered or to be had made committed done or suffered in about touching or concerning the aforesaid judgment or in about touching or concerning any writ declaration plea replication pleading entry or other proceeding whatsoever of or in any way concerning the same And for what you the said attorneys or any of you shall do or cause to be done in the premises or any or either of them these shall be to you and every of you sufficient warrant and authority And I do hereby expressly nominate and appoint attorney at law to witness

(a) As to the stamp on a warrant of attorney, see *ante*, p. 894.

and attest my execution of this warrant of attorney *In witness*
whereof I have hereunto set my hand and seal the day
of in the year of our Lord one thousand eight hundred
and

No.
CCCLXXV.
*On a Warrant
of Attorney.*

Signed sealed and delivered in the pre-
sence of And I hereby declare
myself to be attorney for the said
C. D. expressly named by the said
C. D. and attending at his request to
inform him of the nature and effect
of this warrant of attorney [which I
accordingly did before the same was
executed] And that I subscribe my
name hereto as such his attorney (a)

The above named
defendant

Memorandum The within written warrant of attorney is
given to secure the payment from the within named C. D. to
the within named A. B. of the sum of £ with interest
thereon at five pounds per centum per annum from the day of
the date hereof on the day of next ensuing And
it is hereby agreed that judgment may be immediately entered
upon the within warrant of attorney but that no action execu-
tion or other process or proceeding shall be commenced sued
out or prosecuted upon the judgment so to be entered up until
default be made in payment of the above mentioned sum of
£ and interest as aforesaid And it is hereby also agreed
that it shall not in the event of the said A. B. delaying to sue
out execution on the said judgment for any length of time or in
any other event whatsoever be necessary for the said A. B. his
heirs executors or administrators to revive the said judgment
and that execution or executions may be issued without such
judgment being revived and that no proceedings in error or in
equity shall be commenced or prosecuted or any advantage
taken or attempted to be taken by the said C. D. his heirs
executors or administrators for or on account of the premises
or other matter cause or thing whatsoever relating to or in any-
wise concerning the issuing or executing of any such execution
or executions as aforesaid or any other proceeding which may

(a) By 1 & 2 Vict. c. 110, s. 9, warrants of attorney and cognovit actionem
are required to be executed in the presence of an attorney expressly named
by the party, see Shelford's Real Prop. Stat. pp. 528—533, 6th ed. As to
warrants of attorney, see Lush's C. L. Pr. by Stephen, pp. 610—628.

No.
CCCLXXV.
*On a Warrant
of Attorney.*

be taken on the said judgment or to enforce the execution thereof according to the true intent and meaning of these presents Dated this day of in the year of our Lord one thousand eight hundred and fifty

Witness



No.
CCCLXXVI.
*On Payment of
Money by
Instalments.*

No. CCCLXXVI.

Defeasance on Warrant of Attorney to confess Judgment.

Memorandum That the within written warrant of attorney is given to secure the payment by the within named B. to the within named A. of the sum of £600 with interest thereon by the several instalments and on the several days and in manner following (that is to say) the sum of £200 part of the said sum of £600 on the day of now next ensuing the sum of £200 further part thereof on the day of which will be in the year 1860 and the sum of £200 residue of the said sum of £600 on the day of which will be in the same year together with interest upon or in respect of each such instalment after the rate of £5 per cent. per annum to be computed from the date of the within written warrant of attorney and to be paid by equal half yearly payments in each year on the day of and the day of without any deduction or abatement whatever [except income tax] and that no execution shall be issued upon the judgment to be entered up by virtue of the within written warrant of attorney unless or until default shall be made in payment of one instalment of the said sum of £600 or the interest thereof or of any part thereof respectively but in case default shall be made by the said B. his executors or administrators in payment of any or either of the said half yearly instalments or the interest thereof or any part thereof respectively within days after any or either of the days hereinbefore appointed for the payment thereof it shall be lawful for the said A. his executors or administrators to cause execution to be issued upon the said judgment for the whole of the said sum of £600 [including the instalments or instalment if any not then due] or so much thereof as shall then remain unpaid and unsatisfied together with costs of judgment as between solicitor and client including therein the costs of re-

gistering judgment execution sheriff's poundage and officer's fees of keeping possession auctioneer's charges expenses of sale and all other incidental charges and expenses whatever And that it shall not be necessary for the said A. his executors or administrators by writ of revivor entered on the roll or otherwise to revive the said judgment or to take any proceedings for reviving or keeping on foot the same notwithstanding that no proceeding shall have been taken thereon for the space of six years or any other period Dated this day of in the year of our Lord one thousand eight hundred and fifty nine (a).

No.
CCCLXXVI.
*On Payment of
Money by
Instalments.*

No. CCCLXXVII.

A Defeasance upon a Warrant of Attorney given with a Post Obit Bond (see ante, p. 549).

No.
CCCLXXVII.
*On a Post Obit
Bond.*

This Indenture &c. Between (obligor) of &c. of the one part and (obligee) of &c. of the other part Whereas the above named (obligee) hath contracted with the above named (obligor) for the purchase of the sum of £ of &c. to be paid to her the said (obligee) her &c. within six calendar months after the decease of I. F. in the event of the said I. F. departing this life in the lifetime of the said (obligor) but not otherwise at the price or sum of £ And whereas upon the treaty for the purchase of the said contingent sum of £ it was agreed between the said (obligor) and (obligee) that the same should be secured by the bond of the said (obligor) bearing even date with the above written warrant of attorney in the penal sum of £ and by a certain indenture also bearing even date with the above written warrant of attorney and made between the said (obligor) of the one part and the said (obligee) of the other part And that the same should also be further secured by two several warrants of attorney of the said (obligor) for confessing judgment against him in an action of debt for the sum of £ and costs of suit at the suit of the said (obligee) one in her Majesty's Court of Queen's Bench at Westminster and the other in her Majesty's Court of Queen's Bench in Ireland And in pursuance of the said agreements he the said (obligor) hath executed the above written warrant of attorney for confessing judgment against him in her

Recitals of contract for purchase of a contingent sum of £ ,

to be secured by the bond of the vendor,

and two warrants of attorney.

(a) See 16 & 17 Vict. c. 76, ss. 123—134.

No.
CCCLXXVII.
On a *Post Obit*
Bond.

Payment of
consideration
money.

Judgment not
to be entered
up until after
the decease of
&c.

Testatum.

Majesty's Court of Queen's Bench at Westminster *And whereas* the said (*obligee*) hath upon or immediately before the sealing and delivery of the above written warrant of attorney paid to the said (*obligor*) the sum of £ *And whereas* upon the treaty for the said purchase it was agreed that the judgment so to be confessed by the said (*obligor*) in the said Court of Queen's Bench at Westminster for the said sum of £ and costs of suit as aforesaid shall not be entered of record in the same court until after the decease of the said I. F. *Now it is hereby declared* that it shall and may be lawful for the said (*obligee*) to enter up judgment on the aforesaid warrant of attorney immediately after the decease of the said I. F. if the said (*obligor*) shall be then living and not before And that the said judgment to be entered up in pursuance of the before written warrant of attorney is intended to be entered up as a collateral security only for the payment of £ to the said (*obligee*) her executors &c. in case the said (*obligor*) shall be living at the time of the decease of the said I. F. at or within the time hereinbefore mentioned for payment thereof And that no execution shall be issued or taken out upon the said judgment unless default shall be made in payment of the said sum of £ or some part thereof at the time hereinbefore mentioned for payment thereof *And* it is hereby also declared that after full payment of the said sum of £ in case the same shall become payable or in case the said (*obligor*) shall die in the lifetime of the said I. F. then the said (*obligee*) her executors &c. shall deliver up the above written warrant of attorney to be cancelled and acknowledge or cause satisfaction to be acknowledged on the judgment (if any) which shall be entered up as aforesaid *In witness &c.*

DEMISES.

Obs. A demise is another name for a lease, but it is most commonly applied to deeds by which long trust terms are created for various purposes, and its provisions are essentially different from those contained in ordinary leases. Mortgages by demise were formerly very commonly in use. Demises are sometimes made to trustees for in-

demnifying purchasers and others from some defect in the title, or from some charge and incumbrance where a release cannot be obtained.

Demises.

No. CCCLXXVIII.

Demise of Real Estates for the Payment of Debts.

No.
CCCLXXVIII
To pay Debts.

This Indenture made &c. Between (debtor) of &c. of the one part (trustees) of &c. of the second part and (creditors) &c. of the third part Whereas the said (D.) is indebted to the several persons parties hereto of the third part in the several sums of money set opposite to their respective names in the schedule hereunder written And whereas the said (D.) is seised or entitled for an estate for his life subject to the several annuities or other rent charges hereinafter mentioned of or to the manor messuages farms lands tenements and hereditaments herein- after particularly mentioned and intended to be hereby demised Now this Indenture witnesseth That for securing the payment of the said several debts so mentioned to be due and owing from the said (D.) to the several persons parties hereto of the third part He the said (D.) Doth by these presents demise unto the said (T.) All those &c. with their rights easements and appurtenances To have and to hold the said manors &c. and all and singular other the premises with their and every of their appurtenances unto the said (T.) their executors administrators and assigns for the term of ninety-nine years from thence next ensuing and fully to be complete and ended if the said (D.) shall so long live [Subject nevertheless to the payment of one annuity or yearly sum of £ to C. the wife of the said (D.) which is charged on the said estate by the act of parliament some time since passed for settling the estates of the said (D.) and also subject to the payment of one annuity of £ per annum to E. C. during the life of the said E. C. which is given him by the will of his late father] And it is hereby declared and agreed by and between the parties hereto That they the said (T.) and the survivor of them and the executors and administrators of such survivor shall from time to time receive and take the rents issues and profits of the said hereditaments hereinbefore demised and do and shall apply the same after payment of the said annuities or yearly sums of £ and £ respectively in payment of

Testatum.

Habendum.

No.
CCCLXXVIII
To pay Debts.

all costs to be incurred in receiving or compelling payment of the said rents issues and profits or in the execution of the trusts of these presents including the salaries of any receivers agents or other person or persons as the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall think necessary And do and shall pay and apply the residue of the said rents issues and profits unto and among the several creditors of the said (*D.*) whose names and debts are mentioned and set forth in the said first schedule hereunto annexed in such manner and in such proportion as the said (*D.*) with the approbation of the said (*T.*) and the survivor &c. testified by their or one of them signing such order of the said (*D.*) shall from time to time direct them so to do until all the said creditors are fully paid and satisfied their said respective debts And after such debts are fully paid and such charges as they the said (*T.*) have necessarily been put unto or incurred in and about the management and execution of this present trust are also paid and discharged then these presents and every thing herein contained shall cease determine and be utterly void and of none effect the said annuities before mentioned being from that time to be paid out of and by the rents and profits of the said several estates out of which they are granted in the same manner as they were before the executing these presents anything herein contained to the contrary thereof in anywise notwithstanding *In witness &c.*



No.
CCCLXXIX.
Of Advowson.

No. CCCLXXIX.

Demise of an Advowson in Trust to present to a Living.

Obs. The next presentation to an advowson when the subject of a sale or gift is usually transferred by grant. See *post*, GRANT.

Testatum.

This Indenture made &c. Between H. W. of &c. H. W. the eldest son of the said H. W. and S. W. youngest son of the said H. W. the elder of the one part and A. W. of &c. of the other part *Witnesseth* That for divers good causes and considerations them thereunto moving they the said H. W. H. W. and S. W. *Do* and each of them *Doth* grant and demise unto the said A. W. his executors administrators and assigns *All that* the advowson free disposition and right of presentation of in and to the rectory of the parish and parish church of C. in the county

of *To have and to hold* the same advowson and right of presentation with the appurtenances unto the said A. W. his executors administrators and assigns from the day of now next ensuing for and during the full end and term of sixty years from thence next ensuing and fully to be complete and ended subject to the proviso hereinafter contained *And* it is hereby agreed and declared by and between the parties hereto and the true intent and meaning of them and these presents respectively is that the said advowson free disposition and right of presentation to the said parish and parish church of C. hereby granted and demised to the said A. W. his executors administrators and assigns for the said term of sixty years as aforesaid are granted and demised Upon the trusts following (that is to say) *Upon trust* That he the said A. W. his executors administrators or assigns shall stand and be possessed of and interested in the said advowson and premises during the said term *In trust* upon the next vacancy or avoidance of the said church (in case the said S. W. shall be then living) to present the said S. W. being duly qualified according to law to be rector of the said church to the bishop of the diocese or other ordinary of the place in order to his being instituted and inducted into the said rectory and church *Provided always* and these presents are upon this express condition That upon the said S. W. being instituted and inducted into the said rectory and church of C. as aforesaid or in case the said S. W. shall not be qualified as aforesaid or shall die before the said next avoidance then and in any of such cases the grant and demise hereby made and the said term of sixty years shall cease determine and be void to all intents and purposes whatsoever anything hereinbefore contained to the contrary thereof in anywise notwithstanding *In witness &c.*

No.
CCCLXXIX.
Of Advowson.
Habendum.

Upon trust.

Cesser of term.

DEPUTATION.

Obs. A deputy is one who exercises an office in another man's right, and a deputation is the appointment of a deputy, 1 Lill. Abr. It seems that the steward of a manor cannot appoint a deputy, unless authorized by a custom, or by the express terms of his appointment,

Deputation.

Co. Cop. sect. 46; 2 Watk. Cop. 17, Cov. edit.; Gilb. Ten. 284; but a deputy steward may do any act which his principal might have done, except make a general deputy; but both a steward and an under-steward may authorize another, either by deed or parol, to hold a court or do any particular act *pro hac vice*, 4 Co. 30; *Lord Dacre's case*, 1 Leon. 288; *Parker v. Kett*, 1 Ld. Raym. 658, in which case the special purpose for which he is deputed will be the extent of his power, 1 Scriv. Cop. 119, 4th ed.; see Shelford on Copyholds, pp. 210—212. As to the delegation of an authority generally, see further, *ante*, APPOINTMENTS, Pref. sect. 13, p. 235. Also as to the appointment of steward of a manor, see APPOINTMENTS, *ante*, pp. 274—276.



No.
CCCLXXX.

Deputy.

No. CCCLXXX.

General Deputation from a Steward to a Deputy.

To all to whom these Presents shall come I (steward) of &c. gent. send greeting *Whereas* A. B. esq. lord of the manor of &c. by his deed poll bearing date &c. Did depute constitute and appoint me the said (S.) to be his steward of his manors of &c. and did give and grant unto me and my sufficient deputies to be by me in that behalf appointed full power and authority to hold and keep all and singular his courts leet views of frank-pledge courts baron and customary and other courts within the limits and precincts of his respective manors in the said counties of
Now know ye That I the said (S.) by virtue of the power and authority given me by the said A. B. do by these presents constitute and appoint W. S. of &c. gent. my deputy steward to do perform and execute the said office in my stead and place in all things as effectually as if I myself were personally present at the doing thereof he the said W. S. duly accounting to me for all fines heriots and profits of the said courts and also for all fees and perquisites arising from the same when he shall be by me required so to do (a) *In witness* whereof I the said steward have this day set my hand and seal the day of

(a) If a reddendum be added, say, “but nevertheless *yielding* and paying therefore unto me the said (S.) yearly and every year during the said term the clear yearly sum of £ of &c. on the day of in every year.”



Deputation to take a Surrender from a Man and his Wife out of Court, ante, No. CXXVIII., p. 227.

No. CCCLXXXI.

Special Deputation to admit an Heir at Law, and afterwards to take a conditional Surrender.

No.
CCCLXXXI.

*To admit Heir
at Law and
take Surrender.*

Know all men by these Presents That I (steward) of &c. steward duly appointed of the manor of in the county of do by these presents constitute and appoint A. B. (deputy) of &c. my deputy steward to hold a customary court for the said manor pursuant to the provisions for that purpose contained in the Copyhold Act 1841 on or before the day of next and then and there as my said deputy steward to admit (heir) [eldest son and heir at law of (ancestor) deceased late a copyholder or customary tenant of the said manor] tenant to all and singular the lands and hereditaments which the said (ancestor) held of the said manor and of which he died seised To hold to him the said (heir) his heirs and assigns for ever at the will of the lord according to the custom of the said manor And immediately after his said admission to accept and take from the said (heir) a surrender by the rod of all and singular the said premises To the use and behoof of (mortgagee) of &c. his heirs and assigns for ever But with a condition for making void the said surrender on payment by the said (heir) his heirs executors administrators or assigns to the said (mortgagee) his executors administrators or assigns of the sum of £ and interest for the same after the rate of £5 per centum per annum on the day of next ensuing And further to perform and execute all matters and things for the purposes aforesaid as fully and effectually as I could or might do being personally present The said (deputy) duly accounting to me for all such fines fees sum and sums of money as shall be due and received by him for my use by virtue of this appointment upon being thereunto required by me In witness &c.

No.
CCCLXXXII.

*To admit and
take Surrender.*

No. CCCLXXXII.

*Another to admit a Tenant of a Copyhold for Life on the Death
of the first Life, and putting in a fresh Life.*

Know &c. That I &c. do &c. make &c. to hold &c. for the special purpose of admitting C. D. the life next in succession after the death of A. B. whose death was presented at a court held for the said manor on &c. tenant to all that copyhold messuage &c. And immediately after to accept and take from the said C. D. a surrender by the rod of all and singular the said premises to the intent that the same lord of the said manor may regrant the same premises according to the custom of the said manor to the said C. D. for the term of his natural life and the lives of C. D. the younger and G. D. sons of the said C. D. aged years or thereabouts and afterwards to admit the said C. D. on such regrant of the said lord To hold the same to the said C. D. during the term of his natural life and during the lives of the said C. D. the younger and G. D. and the lives of the longest liver of them according to the custom of the said manor And further to do &c. *In witness &c.*

DEVISES.

See *post*, WILLS.

DISENTAILING DEEDS.

- | | |
|--|--|
| 1. <i>Abolition of Fines and Recoveries.</i> | 5. <i>Protector's Consent.</i> |
| 2. <i>Assurances substituted for Fines and Recoveries.</i> | <i>To be given by Deed.</i> |
| <i>As to Copyholds.</i> | <i>When absolute.</i> |
| 3. <i>Power of Disposition by Tenant in Tail.</i> | <i>Not to be revoked.</i> |
| <i>How restricted by Protector of the Settlement.</i> | <i>By Married Woman as a Feme Sole.</i> |
| 4. <i>Who Protector of the Settlement.</i> | 6. <i>Disposition of Entailed Money.</i> |
| | 7. <i>Disposition by Married Woman.</i> |
| | 8. <i>Inrolment.</i> |

Abolition of
fines and re-
coveries.

SECT. 1. By the 3 & 4 Will. 4, c. 74, s. 2, all fines levied, and recoveries suffered, after the 31st December, 1833, are declared to be

void, and where parties were liable, under a covenant, to levy a fine, or suffer a recovery, they are required by this act (s. 3) to execute any deed which shall serve to effect the purposes intended to be effected by the fine or recovery.

*Disentailing
Deeds.*

2. Fines and recoveries were common assurances for passing the lands of tenants in tail. By sect. 40 of the act, every disposition of lands by a tenant in tail is to be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute as by bargain and sale, grant, lease and release, feoffment, &c. In the case of a married woman the husband must concur, and the deed must be acknowledged by her. A tenant in tail must exercise his power of disposition by deed, that is, by an actual conveyance *inter vivos*; he cannot do so by will, and a disposition resting in contract only is not to be of any force. This is conformable to an old rule of law and equity, that the issue in tail was not bound by any contract of the ancestor, *Jenkyns v. Keymes*, 1 Lev. 54; *Ross v. Ross*, 1 Ch. Ca. 171, because he claimed *per formam doni*, *Frederick v. Frederick*, 1 P. Wms. 720; *Fox v. Crane*, 2 Vern. 306. See Shelford's Real Prop. Stat. p. 350, 6th ed. As to copyholds, a tenant in tail may, (by s. 50,) under the restrictions applied to lands of freehold tenure, dispose of his estate, provided it be a legal estate, by surrender only; but if it be an equitable estate, he may dispose of it by any of the ordinary modes of conveying lands of freehold tenure.

Assurances
substituted for
fines and re-
coveries.

As to copy-
holds.

3. Under the old law, tenants in tail in remainder had regularly no power of disposing of their estates without the concurrence of other parties; but now, by this act (s. 15), a tenant in tail may dispose of his estate as an estate in fee simple, where there is no person whose concurrence is required by the act, and in case there is such a person, who by the act is styled "the protector of the settlement," he may do the same with his concurrence. The effect of such a disposition is analogous to that of a recovery, namely, to bar not only the issue in tail, but also all remainders and reversions expectant upon the estate tail. If, where there is such a protector, the tenant in tail parts with his estate without such consent, he cannot by the act (s. 34) convey any greater estate than a base fee, that is, a fee determinable on failure of issue. The effect therefore of such a disposition answers to that of a fine with proclamations under the old law. But if a tenant in tail, with a reversion in fee to himself, levied a fine, the effect of that was, that the base fee became merged in the absolute fee, so as to let in all the incumbrances of the ancestor, *Crow v. Baldwre*, 5 T. R. 109. To prevent this consequence, in the case of a tenant in tail disposing of his estate without the consent of the protector, the act (s. 39) has declared that such base fee, when united with the fee simple, shall

Power of dis-
position by
tenant in tail.

How restricted
by protector of
the settlement.

*Disentailing
Deeds.*

not merge, but be enlarged into a fee simple. The tenant in tail has likewise (by s. 43) the power of making a partial as well as a total alienation of his estate, subject to the restrictions before mentioned; and the effect of such a disposition, if it be a mortgage in fee, will be totally to bar the entail. Such would have been the effect of the recovery formerly, if it had not been restricted in equity to the purposes of the mortgage, leaving the resulting use to the mortgagor, subject to the entail, 1 Pow. on Mort. 675 (n. c.). The power of alienation given to tenants in tail is (by s. 18) not to extend to such as are tenants in tail of lands given by the crown, which is in confirmation of the 34 & 35 Hen. 8, c. 20; nor to tenants in tail after possibility of issue extinct, who, as well as tenants by the curtesy and others, were, by the 14 Eliz. c. 8, restricted from suffering a recovery without the consent of the remainderman. Issue inheritable are (by s. 20) not at liberty to dispose of their expectancies, which differs from the old law, inasmuch as a fine levied by an heir in the lifetime of the ancestor would operate by way of estoppel, *Weale v. Lower*, Pollexf. 54; Fearn's Conting. Rem. 356. As to the alienation of contingent interests, see 8 & 9 Vict. c. 106, s. 6.

*Who protector
of the settle-
ment.*

4. The protector of the settlement answers for the most part to the person who under the old law was called the tenant to the *præcipe* or writ for suffering a recovery, and will, generally speaking, be the owner of the estate for life; but the act has in many respects modified or enlarged the qualifications of the protector. In respect to his estate, the owner of the first existing estate under a settlement prior to an estate tail determinable upon a life or lives, or for a greater estate, not being an estate for years, is (by s. 22) to be the protector; and where there is more than one such estate, each is (by s. 23) to be protector in respect of his share, and a married woman is (by s. 24) in respect of such estate to be protector in conjunction with her husband, unless it be settled to her separate use, in which case she is to be sole protector. An estate by the curtesy, or by way of resulting trust (s. 22), and an estate confirmed or restored by a settlement, is (by s. 25) to be deemed a subsisting estate under such settlement; in all which there is only a slight deviation from the old law, but in other particulars it differs more materially. Possession of a competent estate is no longer a necessary qualification, as formerly, to make a good tenant to the *præcipe*; a protector who has parted with his estate will (by s. 22) still continue protector, and a settlor is empowered (by s. 32) to appoint any number of persons not exceeding three, being *in esse* and not aliens, to be protector, with a power of filling up vacancies so as to perpetuate the protectorship. In the case of lunatics or idiots who are otherwise incompetent to be protectors, the Lord Chancellor is empowered (by s. 33) to execute the office of protector for them. Trustees having the legal estate could formerly

make a good tenant to the *præcipe*, but by this act (s. 27) a bare trustee (unless by s. 31 he had been made a trustee before the passing of this act) is disqualified from being a protector; so a woman in respect of her dower, an heir, executor, administrator or assign, and (by s. 26) a lessee in respect of a lease under the settlement. In the event of any taker of the first estate being excluded by the provisions in the act, the taker of the next prior estate will (by s. 28) be competent to be the protector.

*Disentailing
Deeds.*

5. The consent of the protector must (by s. 36) be absolutely free, without any fraud, device or management to influence or control him in giving his consent. Any agreement entered into with him to induce him to withhold his consent is declared to be void, and a court of equity is not at liberty to restrain the protector in the exercise of his power, nor to consider giving his consent as a breach of trust. The act further declares (by s. 37) that the rule of equity which applies to dealings and transactions between the donee of a power and the objects in whose favour the power is exercised, is not to apply to the protector of the settlement and the tenant in tail. By the rule here referred to, any appointment made by an appointor, with a condition annexed for his own benefit and to the prejudice of the appointees, is declared void, *Pawlet v. Pawlet*, 1 Wils. 224. See Shelford's Real Prop. Stat. p. 346, 6th ed. The consent of the protector may (by s. 43) be given by the assurance by which the disposition is effected, or by a distinct deed. And if by a distinct deed, it will (by s. 43) be considered as an absolute and unqualified consent, unless there be any words limiting it to that particular assurance; and when the consent is once given it cannot (by s. 44) be revoked. When the consent of the Lord Chancellor is required, it is to be obtained (by s. 48) in a summary way, by motion or petition. The consent of a married woman is (by s. 45) to be given in the same manner as if she were a *feme sole*. Courts of equity are excluded (by s. 47) from giving effect to dispositions by tenants in tail, or consents by protectors, which would not be valid at law.

Protector's
consent.

To be given by
deed.

When absolute.

Not to be re-
voked.

By married
woman as a
feme sole.

6. The provisions of this act, which give a tenant in tail the power of disposing of his estate, are applied (by ss. 70, 71, 72) to money in the funds, or to money to arise from the sale of lands, which is to be invested in the purchase of lands to be settled. Formerly a tenant in tail could not in this case receive the money, but was obliged to purchase land, in order to suffer a recovery. The 39 & 40 Geo. 3, c. 46, and 7 Geo. 4, c. 45, empowered the Court of Chancery upon petition to order the payment of the money to the tenant in tail under certain limitations, but now by this act, which repeals the former acts, an assignment of the entailed money, subject to the consent of the protector, if there be any, and also to any other prior interests and charges, is to have the same effect as an assurance will have in the sale of

Disposition of
entailed money.

*Disentailing
Deeds.*

land. By this means, with the consent of the protector, if there be no subsisting interests or charges, the person barring the entail will receive the money from the trustee discharged from the entail; but otherwise the trustee will continue to hold it in trust for the persons barring the entail and the persons entitled to such interests and charges.

*Disposition by
married
women.*

7. As under the old law a married woman could not part with her estate except by levying a fine, or suffering a recovery, in which the concurrence of her husband was necessary, the new act (s. 77) declares every disposition by a married woman, without the concurrence of her husband, so as to release, surrender or extinguish any estate, or to release or extinguish any power which may be vested in her in regard to any estate in land, to be void, except (by s. 91) in certain cases of lunacy, absence from the country or otherwise, in which the Court of Common Pleas, or in some cases the Court of Chancery, is authorized to dispense with his concurrence. The act requires by (s. 79) that every deed to be executed by a married woman, except such as shall be executed by her as sole protector, shall be produced and acknowledged before a judge or certain commissioners, as her act and deed, she being examined apart as to her free and voluntary consent (s. 80). As to alienation by married women, see Shelford's Real Prop. Stat. pp. 377—412, 6th ed. As to the affidavit verifying the certificate of acknowledgment by a married woman, see *ante*, pp. 52, 53.

Inrolment.

8. Every assurance by a tenant in tail (except a lease for 21 years at rack-rent, or not less than five-sixths of a rack-rent) must (by s. 41) be inrolled, or in the case of copyholds (by s. 54) be entered on the court rolls within six months after its execution; and also every other deed to take effect under this act must (by ss. 46, 59, 69, 71, 72, 73, 74, 86) be inrolled, entered or filed. A bargain and sale, if inrolled under this act, is to be as valid as if inrolled under the Statute of Inrolments; when the deed is inrolled within the prescribed time, it is to take effect in the same manner as if inrolment had not been required, except that it will be void against a purchaser for a valuable consideration under a subsequent deed which has been previously inrolled.



No.
CCCLXXXIII

*Conveyance
where there is
no Protector.*

No. CCCLXXXIII.

Conveyance by a Tenant in Tail in Possession where there is no Protector, his Wife joining to bar her Dower.

Obs. Any incumbrances, as a mortgage or lease created by a tenant in tail, were not defeated but confirmed by a recovery; and in ac-

cordance with this, the act (s. 38) provides that any assurance by a tenant in tail is to have the effect of confirming all voidable estates against a purchaser, unless he be a purchaser without notice of such voidable estates. As to the variations, where there is a protector, see *next Precedents*.

No.
CCCLXXXIII
*Conveyance
where there is
no Protector.*

This Indenture made &c. Between (*vendor*) of &c. eldest son and heir of I. F. late of &c. deceased and Ann his wife of the one part and (*purchaser*) of &c. of the other part *Whereas* by indentures of lease and release bearing date respectively the _____ days of _____ the release being made between the said I. F. of the first part M. F. (then M. B. spinster) late widow and relict of the said I. F. of the second part (*trustees*) of &c. of the third and fourth parts being the settlement made previously to and in contemplation of the marriage then intended and shortly after solemnized between him and the said M. B. the messuages or tenements lands and hereditaments hereinafter described (amongst other hereditaments) were duly conveyed and assured from and after the solemnization of the said marriage to the use of the said F. B. and his assigns during the term of his natural life And from and immediately after the determination of that estate by forfeiture or otherwise during his lifetime to the use of the said (*T.*) their heirs and assigns during the life of the said F. B. to preserve contingent remainders and from and after the decease of the said F. B. to the use and intent that the said M. B. if she should survive the said F. B. and her assigns might receive and take during the remainder of her life the yearly rentcharge or sum of £ _____ out of the rents and profits of the said hereditaments as and for her jointure and in bar of dower with the usual powers of distress and entry for enforcing payment of the same and subject thereto with remainder to the use of the said (*trustees of term*) their executors administrators and assigns for the term of 500 years upon the trusts therein declared for securing the payment of the said yearly sum of £ _____ and from and after the expiration or other sooner determination of the said term and in the mean time subject thereto to the use of the first and every other son of the said then intended marriage in remainder one after another severally and successively according to their seniority and the heirs male of their respective bodies with divers remainders over *And whereas* the said F. B. died on or about the _____ day of _____ leaving the said (*V.*) his eldest son of the said marriage him surviving *And whereas* the said M. B. departed this life on or

Recital of settlement.

Death of settlor.

Death of widow.

No.
CCCLXXXIII

*Conveyance
where there is
no Protector.*

Testatum.

about the day of now last past and all arrears of
the said yearly sum of £ have been paid up to the day of
her decease *And whereas* the said (*V.*) hath contracted with
the said (*P.*) for the absolute sale to him of the fee simple and
inheritance of the messuage farm lands and hereditaments here-
inafter described being part of the hereditaments comprised in
the said in part recited indenture of settlement free from all in-
cumbances at or for the price or sum of £ *Now this In-*

denture witnesseth That in pursuance of the said contract and
for defeating all estates tail of the said (*V.*) of and in the mes-
suage farm lands and hereditaments hereby granted or intended
so to be and all remainders reversions estates rights interests
and powers to take effect after the determination or in defeasance
of such estates tail and for limiting and assuring the inheritance
thereof in fee simple unto and to the use of the said (*P.*) his
heirs and assigns as hereinafter expressed and in consideration
of the sum of £ of lawful money of Great Britain to the
said (*V.*) in hand paid by the said (*P.*) at or immediately before
the sealing and delivering of these presents the receipt of which
said sum of £ in full for the absolute purchase of the
hereditaments hereinafter described and intended to be hereby
granted and the fee simple and inheritance thereof free from all
incumbances the said (*V.*) doth hereby admit and acknowledge
and from the same and every part thereof doth hereby acquit
release and discharge the said (*P.*) his heirs executors adminis-
trators and assigns and every of them for ever The said (*V.*)
doth by these presents grant dispose of alien release and confirm
and the said (*wife*) with the concurrence of the said (*V.*) and
for the purpose of releasing and extinguishing her right and
title of dower and every other estate and interest of the said
(*wife*) in or out of the hereditaments hereinafter described and
hereby granted or intended so to be doth by these presents
intended to be forthwith duly acknowledged by the said (*wife*)
and perfected in other respects with the solemnities prescribed
by law for rendering deeds by married women effectual to ex-
tinguish their interests in land remise release and quit claim
unto the said (*P.*) and his heirs Together with all houses &c.
[*general words, see PURCHASE DEEDS (General Precedent)*]

Habendum.

And all the estate &c. *To have and to hold* the said messuage
farm lands hereditaments and all and singular the premises
hereby granted or intended so to be with their rights and appur-
tenances unto the said (*P.*) his heirs and assigns for ever freed

and discharged from the said estates tail and all estates rights titles interests and powers to take effect after the determination or in defeasance of the said estate tail of the said (V.) To the only use of the said (P.) his heirs and assigns for ever And the said (V.) doth hereby for himself [*Covenants for title*, see *post*, p. 923, and PURCHASE DEEDS (a)] And for the considerations aforesaid and for more effectually conveying and assuring the hereditaments and premises unto and to the use of the said (P.) his heirs and assigns the said (V.) for himself his heirs executors and administrators and for the said Ann his wife she hereby consenting thereto doth hereby covenant with the said (P.) his heirs and assigns that she the said (wife) shall forthwith at the costs of the said (V.) appear before some person or persons duly authorized to take the acknowledgments of deeds of married women and acknowledge these presents as her act and deed to the intent that the same may be perfected as aforesaid and a certificate of the acknowledgment of these presents with the necessary affidavit verifying the same may be filed of record in the Court of Common Pleas at Westminster In witness &c.

No.
CCCLXXXIII
Conveyance where there is no Protector.

Covenants for title.

Covenant to acknowledge deed.

No. CCCLXXXIV.

Conveyance by Protector Tenant for Life and his Son Tenant in Tail in Remainder.

No.
CCCLXXXIV.
By Protector and Tenant in Tail.

This Indenture made &c. Between (protector) of &c. of the first part (tenant in tail) of &c. of the second part and (grantee) of &c. of the third part Whereas by indentures of lease and release and settlement bearing date respectively the and days of the indenture of release and settlement being made between &c. (parties) being the settlement made previously to and in consideration of the marriage then intended and shortly afterwards solemnized between the said (protector) and Ann his wife the messuages lands and hereditaments hereinafter described and intended to be hereby granted were limited after the solemnization of the said then intended marriage [to use of protector for life, remainder to trustees and

Recital of settlement creating entail.

(a) It may in some cases be advisable to insert the following covenant when the deed is not to be acknowledged before the purchase-money is paid. See other forms of this covenant, Shelford's Real Prop. Stat., App. p. vi., 6th ed.

No. CCCLXXXIV By Protector and Tenant in Tail.	<p><i>their heirs during his life to support contingent remainders, remainder to the use of the first and every son of the said (protector) by his said wife successively in tail general with divers remainders over]</i> And whereas the said (<i>tenant in tail</i>) is the first and eldest son of the said marriage and attained his age of twenty-one years on the day of now last past And whereas the said (<i>protector</i>) and (<i>tenant in tail</i>) are desirous of barring the estate tail so limited as aforesaid and of limiting the inheritance in fee simple in possession of the said hereditaments to the uses and in manner hereinafter expressed Now this <i>Indenture witnesseth</i> That in order to defeat and destroy all estates tail of the said (<i>tenant in tail</i>) in the messuages lands and hereditaments hereinafter described and all estates rights titles interests and powers to take effect after the determination and in defeasance of such estates tail and in order to assure and limit the inheritance in fee simple in possession of and in the same messuages lands tenements and hereditaments to the uses and in manner hereinafter expressed The said (<i>protector</i>) and also the said (<i>tenant in tail</i>) with the consent of the said (<i>protector</i>) as protector of the settlement made by the said recited indentures do and each of them doth by these presents grant dispose of and confirm unto the said (<i>grantee</i>) and his heirs</p> <p>All [<i>parcels</i>] And all other the messuages lands tenements and hereditaments of or to which the said (<i>tenant in tail</i>) is seised or entitled under or by virtue of the said recited indentures And all &c. (<i>general words</i>) And all the estate &c. To have and to hold the said messuages lands tenements hereditaments and premises hereby granted or intended so to be with their appurtenances unto the said (<i>grantee</i>) and his heirs for ever (freed and discharged from the said estates tail and all estates rights titles interests and powers to take effect after the determination or in defeasance of the said estates tail) Nevertheless To the use of such person or persons for such estate or estates for such interest or interests and subject to such powers provisoes and agreements with such limitations and remainders over and charged and chargeable with such sum or sums of money either annual or in gross and in such manner and form generally as the said (<i>protector</i>) and (<i>tenant in tail</i>) during their joint lives by any deed or deeds instrument or instruments in writing either with or without power of revocation and new appointment to be by them respectively signed sealed and delivered in the presence of and attested by one or more credible witness or witnesses shall</p>
Testatum.	
Protector and tenant in tail convey.	
Parcels.	
Habendum.	
To grantee.	
To such uses as protector and tenant in tail shall appoint.	

direct or appoint and in default of such direction or appointment and so far as any such direction or appointment shall not extend [*Where the entail is to be absolutely barred, To the use of the said (protector) and his assigns during his natural life in restoration of the life estate limited to him by the said recited indentures with the same powers and privileges as belonged to him immediately before the execution of these presents and immediately after his decease to the use of the said (tenant in tail) his heirs and assigns for ever*] [*Where the limitations in the previous settlement are to be preserved subject to the power of joint appointment the following to be substituted for the words within brackets (a)*] To such uses upon such trusts and with under and subject to such powers provisoes and limitations as were subsisting concerning the said messuages farms lands and other hereditaments under and by virtue of the said recited indentures immediately before the execution of these presents and to upon or for no other use trust intent or purpose whatsoever
In witness &c.

No.
CCCLXXXIV
By Protector
and Tenant in
Tail.

Protector for
life.

Remainder to
tenant in tail
in fee.

To the old
uses.

No. CCCLXXXV.

Conveyance by Husband and Wife of her undivided Share of an Estate to which she is entitled in Remainder with the Consent of the Protector.

No.
CCCLXXXV.
By Husband
and Wife, with
Protector's
Consent.

This Indenture made &c. Between (protector) of &c. of the first part (husband) of &c. and M. his wife before her marriage M. J. spinster of the second part and (grantee) of &c. of the third part Whereas [recite marriage settlement with limitations to settlor for life remainder to the protector for life remainder to first and other sons successively in tail with remainder to daughters as tenants in common in tail and the death of settlor] And whereas the said (wife) and A. B. and C. are the daughters and only children of the said (settlor) deceased and (protector) and as such are tenants in common in tail of the lands and hereditaments hereinafter described and hereby granted or intended so

Recital of issue
of marriage.

(a) It is assumed in this case that the parties contemplate a resettlement of the estates on the son's marriage, and that it is intended to give the son some immediate interest as a rent-charge issuing out of the estate during his father's lifetime. Where the parties have no such object in view, it is sufficient for the protector to consent without conveying his life estate.

No.
CCCLXXXV.

By Husband
and Wife, with
Protector's
Consent.

Of desire to
bar entail.

Testatum.

Husband and
wife convey
with protector's
consent.

Operative part
where several
tenants in
common join.

to be in remainder expectant and to take effect on the decease of the said (*protector*) And whereas the said (*wife*) having attained her age of twenty-one years on the day of now last past the said H. and M. his wife are desirous of barring the said estate tail and all other the estates tail of the said (*wife*) of and in the said hereditaments and of limiting and assuring the one equal undivided fourth part or share and all other the parts and shares to which the said M. or the said H. and M. his wife in her right are entitled of and in the same hereditaments to the uses and subject to the powers hereinafter contained subject and without prejudice to the estate for life of the said (*protector*) under the said recited indenture And whereas the said (*protector*) has agreed to become a party to these presents for the purpose of giving her consent to the disposition intended to be hereby made Now this Indenture witnesseth That for defeating all estates tail of the said husband and M. his wife in her right or of her alone of and in the said undivided fourth part or share or other the parts or shares of or to which the said (H.) and M. his wife or either of them are or is seised or entitled of and in the hereditaments hereinafter described and also for defeating all estates rights titles interests and powers to take effect after the determination or in defeasance of such estates tail as hereinbefore mentioned and in order to assure the inheritance in fee simple in possession of the said one undivided fourth part or share or other the parts or shares hereinbefore mentioned (subject to the estate for life therein of the said (*protector*)) To the uses and in manner hereinafter expressed He the said (H.) and with his concurrence the said M. his wife with the consent of the said (*protector*) as the protector of the settlement creating the said estates tail so far as regards the said undivided fourth part or share or other the parts or shares hereinbefore mentioned testified by her being a party to and executing these presents Do and each of them Doth by these presents intended to be forthwith duly acknowledged by the said M. and perfected in other respects with the solemnities prescribed by law for rendering deeds by married women effectual to pass and convey their interests in land grant dispose of and confirm unto the said (*grantee*) and his heirs (a) All that one equal undivided fourth

(a) Now this Indenture witnesseth That in pursuance and performance of the said recited agreements and for the purpose of defeating all estates tail of the said (*tenants in tail*) to which they or any or either of them are or is

part or share of the said M. or of the said H. and M. his wife in her right (the whole into four equal parts to be divided) *And* all other the parts or shares (if any) of the said husband and M. his wife or either of them of and in *All &c.* [*parcels, general words All the estate &c.*] *To have and to hold* the said one equal undivided fourth part or share of and in the said lands and hereditaments and all other the parts or shares and premises hereinbefore granted or intended so to be with their appurtenances unto the said (*grantee*) and his heirs freed and discharged &c. *ante*, p. 918 *To* the use of such person or persons for such estate or estates and for such interest or interests by way of annuity rent-charge or otherwise and in such parts shares and proportions and upon such trusts and for such intents and purposes and in such manner and form generally and either with or without powers of revocation and new appointment as the said H. and M. his wife shall from time to time or at any time or times during their joint lives by any deed or deeds instrument or instruments in writing to be sealed and delivered by them in the presence of and to be attested by two or more credible witnesses jointly direct or appoint *And* in default of such joint direction or appointment and so far as any such joint direction or appointment shall not extend *To* the use of the said H. and M. his wife and their assigns during the term of their natural lives and the life of the survivor of them without impeachment for any manner of waste *And* from and after the decease of the survivor of them the said H. and M. his wife *To* the use of such person or persons for such estate or estates and for such interest or interests by way of annuity rent-charge or otherwise and in such parts shares and proportions and upon such trusts and for such intents and purposes and in such manner and form generally and either with or without powers of revocation and new appointment as the said (*wife*) notwithstanding her present or any future cover-

No.
CCCLXXXV.
*By Husband
and Wife, with
Protector's
Consent.*

As husband
and wife shall
jointly appoint.

In default to
husband and
wife for their
lives and the
life of survivor.
Remainder.
As wife shall
by deed or will
appoint.

seised or entitled either in possession or remainder of and in the messuages lands and hereditaments hereinafter described or any part or parts thereof and all remainders reversions estates rights interests and powers to take effect after the determination or in defeasance of such estates tail as aforesaid or any of them *And* in order to assure the inheritance of the same hereditaments subject to the estate for life of the said (*protector*) to the several uses and in manner hereinafter expressed They the said (*tenants in tail*) according to their respective shares and interests with the consent of the said (*protector*) as the protector of the settlement creating the aforesaid estates tail testified by his sealing and delivering these presents do and every of them doth by these presents grant dispose of and confirm unto the said (*grantee*) and his heirs.

No.
CCCLXXXV.

*By Husband
and Wife, with
Protector's
Consent.*

ture shall from time to time or at any time or times by any deed or deeds instrument or instruments in writing to be signed sealed and delivered by her in the presence of and attested by two or more credible witnesses or in and by her last will and testament or any writing in the nature thereof or any codicil or codicils thereto to be by her signed in the presence of and attested by two or more credible witnesses direct or appoint the same and in default of such last-mentioned direction or appointment and so far as any such direction or appointment shall not extend To the use of the said wife her heirs and assigns for ever *In witness &c.*



No.
CCCLXXXVI

*Without
Protector's
Consent.*

No. CCCLXXXVI.

Conveyance by a Tenant in Tail without the Consent of the Protector.

Obs. A tenant in tail in remainder may part with his estate to the extent of his power, as well as a tenant in tail in possession, provided it be not an expectant interest which he may have as issue inheritable to any estate tail therein, 3 & 4 Will. 4, c. 74, s. 20. As to inrolment, see Pref. sect. 8, p. 914.

Recitals.

This Indenture made &c. Between (vender) of &c. of the one part and (purchaser) of &c. of the other part Whereas [recite the deed or will creating the entail, see former Precedents] And whereas [recite death of settlor or testator, as the case may be] And whereas the said (V.) hath issue five children namely [here state the ages of the several children] And whereas [recite contract for purchase] And whereas the said (V.) cannot obtain the consent of the said (tenant for life) as protector of the settlement made by the said recited indenture [or "will"] to the alienation of the estate in remainder of the said (V.) but the said (P.) has agreed to accept a conveyance from the said (V.) without such consent on his entering into such covenant for perfecting the title as is hereinafter contained Now this Indenture witnesseth That in order to defeat as far as he lawfully can or may the estate tail of him the said (V.) of and in the lands and hereditaments hereinafter granted or intended so to be and to pass a base fee in remainder immediately expectant on the decease of the said (protector) and in consideration of the sum of £ by the said (P.) on the execution hereof paid to the said (V.) the receipt of which sum the said (V.) hereby acknowledges and therefrom releases the said (P.) his heirs executors administrators and assigns He the said (V.) Doth by these presents grant and convey unto the said (P.) and his heirs All that

Testatum.

&c. [*parcels*] with all their rights &c. Together [*general words*]
And all the estate &c. *To have and to hold* the said lands &c. and
 all and singular other the premises hereby granted or intended so
 to be unto and to the use of the said (*P.*) his heirs and assigns for
 ever subject nevertheless to the estate for life of the said (*pro-*
rector) and to the estates rights and interests to take effect after
 the determination or in defeasance of the estate tail of him the
 said (*V.*) (*a*) *And* the said (*V.*) for himself his heirs executors and
 administrators doth hereby covenant with the said (*purchaser*)
 his heirs and assigns in manner following (that is to say) that
 notwithstanding any act or deed by him the said (*V.*) or the
 said (*testator*) committed or executed to the contrary he the
 said (*V.*) at the time of the execution of these presents is abso-
 lutely seised of and in or well entitled to the said lands and other
 hereditaments hereby granted or intended so to be and every
 part thereof with their appurtenances for an estate tail in re-
 mainder immediately expectant upon the decease of the said
 (*protector*) with such remainders over as aforesaid *And* that
 notwithstanding any such act or deed as aforesaid he the said
 (*V.*) now hath good right and absolute authority to grant the
 lands and other hereditaments hereby granted or intended so to
 be with their appurtenances unto the said (*P.*) his heirs and
 assigns in manner aforesaid according to the true intent and
 meaning of these presents *And* that it shall be lawful for the
 said (*P.*) his heirs and assigns immediately after the decease of
 the said (*protector*) and at all times thereafter peaceably and
 quietly to enter upon and to hold and enjoy the said lands and
 other hereditaments hereby granted or intended so to be with
 their appurtenances and to receive and take the rents issues and
 profits thereof and of every part thereof for his and their own
 use and benefit without any suit eviction interruption claim or
 demand whatsoever of or by him the said (*V.*) his heirs or issue
 in tail or of or by any other person or persons lawfully or equit-
 ably claiming or to claim by from or under or in trust for him
 them or any of them or by from or under the said (*T.*) except
 in respect of the estates rights and interests subject to which the
 said hereditaments are hereby granted as aforesaid *And* that
 freely and absolutely acquitted released and for ever discharged
 or otherwise by the said (*V.*) his heirs executors or adminis-
 trators well and sufficiently kept harmless and indemnified from

No.
 CCCLXXXVI
 Without
 Protector's
 Consent.

Habendum.

Covenants for
 title.

Free from
 incumbrances.

(a) If the reversion in fee be in the tenant in tail himself, then say, "other than the ultimate reversion so limited to him by the said in part recited indenture" [*or* "will"].

No.
CCCLXXXVI

*Without
Protector's
Consent.*

For further
assurance.

Covenant to
perfect the
title.

and against all former estates charges and incumbrances whatsoever either already created occasioned or suffered or hereafter to be created occasioned or suffered by the said (*V.*) or his heirs or issue in tail or by any person or persons lawfully or equitably claiming or to claim by from or under or in trust for him them or any of them or by the said (*T.*) or any person claiming under him except as aforesaid *And further* that the said (*V.*) his heirs and issue in tail and all and every other person and persons having or rightfully claiming or to claim any estate right title or interest either at law or in equity of in to or out of the said lands and other hereditaments hereby granted or intended so to be or any of them or any part thereof under or in trust for the said (*V.*) his heirs or issue in tail or any of them or by from or under the said (*T.*) (except persons claiming only in respect of the estates rights and interests subject to which the said hereditaments are granted as aforesaid) shall and will from time to time and at all times hereafter upon every reasonable request and at the costs in the law of the said (*P.*) his heirs or assigns make do acknowledge and execute all and every such further and other lawful and reasonable acts deeds and assurances in the law whatsoever for the more perfectly and absolutely granting releasing or otherwise assuring the said lands and other hereditaments hereby granted or intended so to be and every part thereof with their appurtenances unto and to the use of the said (*P.*) his heirs and assigns or otherwise as he or they shall direct or appoint as by the said (*P.*) his heirs or assigns or his or their counsel in the law shall be reasonably devised or advised and required and as shall be tendered to be done and executed *And moreover* that the said (*V.*) or his issue in tail when competent so to do at the costs of the said (*V.*) his executors or administrators shall and will make do and execute all such acts deeds conveyances and assurances as shall be necessary and as the said (*P.*) his heirs and assigns or his or their counsel in the law shall reasonably advise or require for effectually defeating all remainders reversions estates rights interests and powers to take effect after the determination or in defeasance of the base fee of the said (*P.*) his heirs and assigns in the said lands and hereditaments hereby granted or intended so to be and for enlarging the base fee of the said (*P.*) his heirs or assigns in the same hereditaments into a fee simple absolute and for perfecting his or their title to the same (*a*) *Or instead of the last covenant as follows*

(*a*) It is to be observed, that a covenant of this kind will not bind the issue in tail, nor those in remainder; and in case of their refusal to perform

[*And moreover* that the said (*V.*) or his issue in tail shall and will when enabled or competent so to do at the request of the said (*P.*) his heirs or assigns but at the costs and charges of the said (*V.*) his heirs executors and administrators do and execute all such deeds and assurances as shall be necessary for defeating all such estates rights and interests to take effect after the determination or in defeasance of the estate tail of the said (*V.*) of and in the said lands &c. and premises hereby granted and for conveying and assuring the absolute fee simple of and in the same premises and every part thereof unto the said (*P.*) his heirs and assigns for ever or as he or they shall direct] *And* the said (*V.*) doth hereby for himself his heirs executors and administrators further covenant with the said (*P.*) his heirs and assigns that he the said (*V.*) his heirs executors or administrators will when and so soon as the same shall become payable pay to the persons or person authorized or empowered to receive the same the duty and all and every the sums and sum of money which under the provisions of "the Succession Duty Act, 1853," shall on the death of the said (*protector*) become payable by the said (*V.*) under the same act in respect of the said hereditaments and premises hereby granted or intended so to be and will at all times indemnify the said (*P.*) his heirs executors administrators and assigns against the payment of the said duty and sums and sum of money and against all actions suits proceedings costs damages claims and demands which may be incurred or sustained by reason of the nonpayment thereof or any part thereof *In witness &c.*

No.
CCCLXXXVI
*Without
Protector's
Consent.*

Covenant by
vendor to pay
succession
duty.

No. CCCLXXXVII.

Conveyance (to be enrolled in Chancery) by indorsement on last Deed, for completing the Title of a Purchaser entitled to a Base Fee under the Assurance of a Tenant in Tail in Remainder.

No.
CCCLXXXVII.
*Enlargement of
Base Fee.*

This Indenture made &c. Between the within named (vendor) of the one part and the within named (purchaser) of the other

it, the only remedy of the purchaser will be an action on the covenant against the representatives of the vendor. See Shelford's Real Prop. Stat. App. XXII., XXIII., 6th ed.

No.
CCCLXXXVII.
*Enlargement of
Base Fee.*

Recitals.

Death of pro-
tector.

Agreement to
perform co-
venant.

Testatum.

Tenant in tail
bargains and
sells to pur-
chaser.

Covenant
against in-
cumbances.

part *Whereas* (a) the within named (V.) the protector of the settlement made by the will recited in the within written indenture departed this life on or about the day of now last past *And whereas* the said (V.) has agreed specifically to perform the covenant contained in the within written indenture for completing the title of the said (P.) to the lands and hereditaments by the same indenture granted or intended so to be *Now therefore this Indenture witnesseth* That in pursuance and performance of the said covenant and in consideration of the sum of 10s. of lawful money of Great Britain to the said (V.) paid by the said (P.) immediately before the execution of these presents the receipt whereof is hereby acknowledged and in order to defeat all remainders reversions estates rights interests and powers to take effect after the determination or in defeasance of the base fee into which the estate tail of the said (V.) was converted by the operation of the within written indenture and in order to enlarge the base fee of the said (P.) in the hereditaments by the within written indenture granted or intended so to be into a fee simple absolute and to perfect the title of the said (P.) to the same he the said (V.) doth by these presents grant release and confirm unto the said (P.) his heirs and assigns the lands hereditaments and all and singular other the premises by the within written indenture granted or intended so to be with their and every of their rights and appurtenances and the reversion and reversions remainder and remainders yearly and other rents issues and profits of the same hereditaments and premises and every part thereof and all the estate right title interest use trust property claim and demand whatsoever of the said (V.) in to or out of the same hereditaments and premises and every part thereof *To have and to hold* the said lands hereditaments and all and singular other the premises hereby granted or intended so to be with their and every of their appurtenances unto and to the use of the said (P.) his heirs and assigns for ever *And* the said (V.) doth hereby for himself his heirs executors and administrators covenant and declare with and to the said (P.) his heirs and assigns that he the said (V.) hath not at any time heretofore made done committed or executed or been party or privy to any act deed matter or thing whatsoever whereby or by reason or

(a) Where this conveyance is not made by indorsement, the last deed should be recited as well as the instrument creating the entail to be barred.

means whereof the said lands hereditaments and premises hereby granted or intended so to be or any of them or any part thereof are is can shall or may be conveyed assured impeached charged or incumbered in title estate or otherwise howsoever (save and except as appears by the within written indenture)
In witness &c.

No.
CCCLXXXVII.
*Enlargement of
Base Fee.*

No. CCCLXXXVIII.

*Consent of the Protector of a Settlement to an absolute Disposition
 by a Tenant in Tail in Remainder.*

No.
CCCLXXXVIII.
*Consent of
Protector.*

To all to whom these presents shall come A. B. of esq.
 (the protector) sends greeting *Whereas* by indentures of lease and release bearing date respectively on or about the 9th and 10th days of March 18 the release being made or expressed to be made between (names of parties) divers messuages farms lands and hereditaments in the several parishes of in the county of in the said indentures particularly mentioned and described with their appurtenances were duly conveyed and assured to the use of the said A. B. for life with remainder to his first and other sons in tail with divers remainders over *And whereas* C. B. of &c. esq. is the eldest son and heir of the body of the said A. B. and under and by virtue of the limitations contained in the said recited indenture of release is entitled to an estate tail in remainder immediately expectant on the decease of the said A. B. of and in the messuages farms lands and hereditaments comprised in the said recited indentures *And whereas* in order to enable the said C. B. to defeat all remainders reversions estates rights interests and powers to take effect after the determination or in defeasance of the estate tail of the said C. B. of and in the messuages farms lands and hereditaments comprised in the said recited indentures the said A. B. as the protector of the settlement made by the same indentures has consented and agreed at the request of the said C. B. to give his unqualified consent and approbation according to the directions for that purpose contained in an act of parliament made and passed in the session of parliament held in the third and fourth years of the reign of his late majesty King William the Fourth intituled "An Act for the Abolition of Fines and Recoveries and for the Substitution of

Creation of
entail.

Agreement of
protector to
consent to
disposition by
tenant in tail.

No.
CCCLXXXVIII.
*Consent of
Protector.*

Testatum.

Protector con-
sents to abso-
lute disposition
by tenant in
tail.

more simple Modes of Assurance" to any disposition conveyance or assurance hereafter to be made and executed by the said C. B. of and concerning the said messuages farms lands and hereditaments in manner hereinafter expressed *Now these presents witness* That in pursuance and performance of said recited agreement he the said A. B. doth by these presents give and grant his absolute and unqualified consent and approbation to any conveyance assurance and disposition which shall be made and executed by the said C. B. either on the day of the date and execution of these presents or at any time thereafter of and concerning all or any part or parts of the messuages farms lands tenements and hereditaments comprised in and conveyed and assured by the hereinbefore recited indentures of lease and release with their and every of their appurtenances subject nevertheless and without prejudice to the estate for life of the said A. B. of and in the same hereditaments and all powers privileges and exemptions (except the power of consenting as protector) annexed or incident to such estate *In witness &c. (a)*



No.
CCCLXXXIX
*Surrender with
Protector's
Consent.*

No. CCCLXXXIX.

*Surrender of Copyholds to a Purchaser by Tenant in Tail
with Consent of Protector.*

Obs. 1. As to the mode of conveying the legal estate of copyholds, see Pref. sect. 2, p. 912.

2. As to the entry of the deed on the court rolls generally, see Pref. sect. 8. If the consent of the protector be given by deed, it must (by s. 51) be entered on the court rolls on or before the surrender, and an acknowledgment that it was produced within the limited time, signed by the lord or steward, must be indorsed thereon, and after the entry of the deed a memorandum must be signed by the lord or steward, testifying the entry. If the consent be not given by deed, then (by s. 52) it must be given to the person taking the surrender,

(a) *Where the consent is qualified*, "Doth by these presents give and grant his consent to such conveyance assurance and disposition as are intended to be made and contained in a certain indenture already prepared and engrossed and bearing even date with these presents and expressed to be made between (*parties*) of and concerning the messuages lands and hereditaments in the same indenture particularly mentioned and described subject nevertheless (*as above*).

and if the surrender be taken out of court, then the memorandum of the surrender, stating the consent, must be signed by the protector, after which a memorandum must be entered on the rolls. If the surrender be taken in court, then a statement of the consent must be entered on the rolls.

3. A deed of covenant is usually executed either before or after the surrender, for which see *post*, PURCHASE DEEDS.

No.
CCCLXXXIX
*Surrender with
Protector's
Consent.*

No. CCCXC.

Surrender out of Court by Tenant in Tail in Remainder, with the Consent of the Tenant for Life (the Protector under the Provisions of 3 & 4 Will. 4, c. 74), for the Purpose of acquiring a Reversionary Estate in Fee Simple.

No. CCCXC.
*Surrender with
Protector's
Consent.*

The manor of } Whereas under and by virtue of the
in the county of } limitations contained in [state whether
a surrender by way of settlement or a will] the customary or
copyhold hereditaments hereinafter described were and do now
stand limited to the use of A. B. of &c. for the term of his life
with remainder to C. D. of &c. and the heirs of his body law-
fully issuing with divers remainders over and at a court held for
the said manor on the day of the said A. B. was
admitted tenant of the same hereditaments for the term of his
life according to the form and effect of the said [state whether
surrender or will] Now be it remembered That on the
day of in the year of our Lord the said C. D. came
before me W. B. steward of the said manor and for the purpose
of defeating the said estate tail to which he the said C. D. is so
entitled as aforesaid of and in the said hereditaments hereinafter
described and all estates rights interests and powers to take
effect after the determination or in defeasance of such estate
tail and of vesting the same hereditaments in the said C. D. and
his heirs absolutely in remainder from and after the decease of
the said A. B. according to the custom of the said manor and
with the consent of the said A. B. signified by his signature to
this memorandum of surrender in compliance with the direction
in that behalf contained in an act of parliament passed in the
fourth year of the reign of his late majesty King William the
Fourth for the abolition of fines and recoveries and for the sub-
stitution of more simple modes of assurance did out of court

No. CCCXC.
*Surrender with
 Protector's
 Consent.*

surrender into the hands of the lord of the said manor by the hands and acceptance of the said steward by the rod according to the custom of the said manor *All &c.* with the appurtenances to the same premises belonging or appertaining and the reversion and reversions remainder and remainders yearly and other rents issues and profits thereof and all the estate right title interest benefit power claim and demand whatsoever of the said C. D. in to or out of the same premises and every part thereof to the use of him the said C. D. his heirs and assigns for ever in remainder expectant and to take effect in possession on the decease of the said A. B. and according to the custom of the said manor freed and discharged from the estate tail of the said C. D. and all estates rights interests and powers to take effect after the determination or in defeasance of such estate tail.

C. D.
 A. B.

Taken and accepted the
 day of by me
 W. B. steward.

No. CCCXCI.

No. CCCXCI.
*Surrender to
 acquire Base
 Fee.*

Surrender out of Court by Tenant in Tail in Remainder, in order to acquire a Base Fee.

The manor of } *Whereas* under and by virtue of the
 in the county of } limitations contained in [*state whether a*
surrender by way of settlement or a will] the customary or copyhold
 and hereditaments hereinafter described were and do now
 stand limited to the use of A. B. of &c. for the term of his life
 with remainder to C. D. of &c. and the heirs male of his body
 lawfully issuing with several remainders over and at a court held
 for the said manor on the day of the said A. B. was
 admitted tenant of the same hereditaments for the term of his
 life according to the form and effect of the said [*state whether a*
surrender or will] *Now be it remembered* That on the day
 of in the year of our Lord the said C. D. came
 before J. S. steward of the said manor and for the purpose of
 defeating the estate tail of the said C. D. and of acquiring a
 base customary fee in the said hereditaments by virtue and in
 pursuance of the provisions contained in an act of parliament

passed in the fourth year of the reign of his late majesty King William the Fourth for the abolition of fines and recoveries and for the substitution of more simple modes of assurance did out of court surrender into the hands of the lord of the said manor by the hands and acceptance of the said steward by the rod according to the custom of the said manor *All &c.* with the appurtenances to the same premises belonging or appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the estate right title interest benefit power claim and demand whatsoever of the said C. D. in to or out of the same premises and every part thereof to the use of him the said C. D. his heirs and assigns for ever in remainder expectant and to take effect in possession on the decease of the said A. B. and according to the custom of the said manor freed and discharged from the estate tail of the said C. D.

C. D.

Taken and accepted the
day of by me

J. S. steward of the said manor.



No. CCCXCII.

No. CCCXCII.

Deed of Consent by the immediate Tenant for Life to a Disposition by the First Tenant in Tail, for the Purpose of acquiring an Estate in Remainder in Fee Simple.

*Consent of
Protector.*

To all to whom these presents shall come A. B. of &c. sends greeting *Whereas* under and by virtue of the limitations contained in [*state whether a surrender by way of settlement or a will*] certain customary or copyhold and hereditaments lying within and holden of the manor of &c. were and do now stand limited to the use of the said A. B. and his assigns for the term of his life and from and after his decease to the use of his eldest son C. B. and the heirs of his body lawfully issuing and at a court held for the said manor on the day of the said A. B. was admitted tenant of the same hereditaments for the term of his life according to the form and effect of the said surrender [*or "will"*] *And whereas* the said C. B. is desirous of acquiring an absolute estate of inheritance in fee simple in remainder according to the custom of the manor of

No. CCCXCII. aforesaid expectant and to take effect in possession at the decease of the said A. B. of and in the said customary or copyhold hereditaments and premises with their appurtenances and hath applied to the said A. B. to give his consent thereto *Now these presents witness* That the said A. B. in his character of protector of the settlement created by the surrender [or "will"] hereinbefore referred to *Doth* hereby signify and declare his absolute and unqualified consent and approbation to any surrender or surrenders or disposition or dispositions by deed or deeds or other assurance or assurances which shall be made or executed by the said C. D. either on the day of the date of this deed poll or at any time or times hereafter of all or any of the customary or copyhold and hereditaments devised by &c. for barring and defeating the estate tail of him the said C. D. of and in the same hereditaments respectively and all estates powers rights and interests to take effect after the determination or in defeasance of such estate tail and for limiting and assuring the same premises subject and without prejudice to the estate for life of the said A. B. and all powers privileges and exemptions annexed to such estate for life to the use of or in trust for the said C. D. his heirs and assigns for ever according to the custom of the said manor of or otherwise as he the said C. D. or his heirs should think fit *In witness &c. (a)*

Memorandum to be indorsed on last Deed.

I E. F. steward of the within mentioned manor of do hereby acknowledge that the within written deed poll under the hand and seal of the within named A. B. was produced to me on the day of before any surrender in pursuance thereof was made by the within named (*tenant in tail*) *Witness* my hand this day of 18

Signature of E. F.

Further Memorandum to be indorsed on last Deed.

I the above named E. F. do hereby testify that the within written deed poll and the above memorandum indorsed thereon have been duly entered on the court rolls of the within mentioned manor *Witness* my hand this day of 18

Signature of E. F.

(a) See Scriv. on Copyh., pp. 846, 847, 4th ed.

No. CCCXCIII.

No.
CCCXCIII.
*Disposition by
Equitable
Tenant in Tail.*

Deed of Disposition by an Equitable Tenant in Tail of Copyholds to a Purchaser (a).

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said A. B. by virtue of [state whether under a surrender deed or will] is equitably entitled to the copyhold hereditaments hereinafter described for an estate to him and the heirs of his body according to the custom of the manor of in the county of And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of the same hereditaments with their appurtenances for an equitable customary estate of inheritance in fee simple in possession at or for the price or sum of £ Now this Indenture witnesseth That for the purpose Testatum.
of barring and extinguishing the said estate tail to which the said A. B. is now equitably entitled as aforesaid and all remainders and reversions expectant thereupon and in consideration of the sum of £ of lawful money of Great Britain to the said A. B. paid by the said C. D. at or immediately before the execution of these presents the receipt of which said sum of £ the said A. B. doth hereby acknowledge and from the same and every part thereof doth hereby acquit release and discharge the said C. D. his heirs executors administrators and assigns and every of them for ever He the said A. B. by virtue and in pursuance of the provisions of the statute in that case made and provided Doth by these presents bargain sell release and dispose of unto the said C. D. his heirs and assigns All [parcels] with the appurtenances to the same premises belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and all the equitable estate right title interest benefit power claim and demand whatsoever of the said A. B. in to or out of the same hereditaments and premises and every part thereof To have and to hold the said and all and singular other the hereditaments and premises hereinbefore bargained and sold or intended so to

(a) This deed must be entered on the court rolls of the manor, but is not required to be enrolled in the Court of Chancery (see ss. 53 and 54 of 3 & 4 Will. 4, c. 74). Seriv. on Copyh., pp. 848—850, 4th ed., from which work the above form, with some alterations, is taken.

No.
CCCXCIII.
*Disposition by
Equitable
Tenant in Tail.*
Covenants for
title by vendor.

be with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever according to the custom of the aforesaid manor And the said A. B. for himself his heirs executors and administrators doth hereby covenant with the said C. D. his heirs and assigns in manner following (that is to say) that (a) he the said A. B. now is possessed of and well entitled to the said customary or copyhold hereditaments and premises hereinbefore bargained and sold or intended so to be for an equitable estate to him and the heirs of his body in possession according to the custom of the manor of aforesaid without any manner of condition contingency or other restraint cause matter or thing whatsoever to alter change defeat revoke impeach make void or determine the same And also that the said A. B. now hath in himself good right full power and authority to bargain and sell all and singular the said customary or copyhold hereditaments and premises hereby bargained and sold or intended so to be with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever in manner aforesaid and according to the true intent and meaning of these presents And moreover that it shall be lawful for the said C. D. his heirs and assigns from time to time and at all times for ever hereafter peaceably and quietly to have hold possess and enjoy the equitable fee simple and inheritance of and in all and singular the said customary or copyhold hereditaments and premises with their appurtenances and to receive the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit and to call for a surrender and assurance of the legal customary fee simple and inheritance of the same hereditaments and premises without any lawful suit interruption or disturbance whatsoever of from or by the said A. B. or his heirs or any other person or persons whomsoever and that free and clear and freely and clearly and absolutely acquitted and discharged or otherwise by the said A. B. his heirs executors and administrators well and effectually kept harmless and indemnified from and against all and all manner of former and other estates titles charges and incumbrances whatsoever [save and except the customary rents fines heriots duties and services

(a) It is to be observed that the covenants in the above form are absolute; it is more usual in such cases for the vendor to enter into covenants only against the acts of himself and of the person under whom he claims.

payable and to be performed to the lord or lady lords or ladies of the manor of aforesaid for the time being for and in respect of the same customary or copyhold hereditaments and premises or any part thereof] *And further* that he the said A. B. and his heirs and all and every other persons and person having or lawfully or equitably claiming or to claim any estate right title trust or interest in to or out of the said hereditaments and premises hereby bargained and sold or intended so to be or any part thereof [except in respect of the estates and interests hereinbefore excepted] shall and will from time to time and at all times hereafter upon the reasonable request and at the proper costs and charges in the law of the said C. D. his heirs or assigns make do and execute or cause and procure to be made done and executed all and every such further and other acts deeds surrenders and assurances in the law whatsoever for the further and more perfectly conveying assuring and confirming all and singular the said customary or copyhold hereditaments and premises hereby bargained and sold or intended so to be with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever according to the custom of the said manor of as by the said C. D. his heirs or assigns or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required (a) *In witness &c.*

No.
CCCXCIII.
*Disposition by
Equitable
Tenant in Tail.*
Further
assurance.

(a) The purchaser, in some cases like the present, may wish to postpone the surrender in order to avoid an immediate admission and the payment of an arbitrary fine. It is assumed in the above case that the legal estate is vested in a trustee who is the tenant on the court-rolls, and it is proper in such a case for the vendor to covenant that the trustee shall surrender to the use of the purchaser, and that until such surrender shall be made, and the purchaser admitted, that the trustee shall be seised of the copyholds in trust for the purchaser, his heirs and assigns (see Shelford's Real Prop. Stat. App., pp. vii., viii., 6th ed.



No.
CCCXCIV.

No. CCCXCIV.

Of Entailed
Trust Money.

*Assignment by Tenant in Tail with Protector's consent to bar
Entail in Money standing in the Names of Trustees to be in-
vested in Lands.*

Obs. As to the purpose and operation of this assignment, see Pref.
sect. 6, p. 913.

Recital of
settlement.

*This Indenture made &c. Between A. B. (Tenant for Life) of
the first part C. D. (Tenant in Tail) of the second part and
E. F. (Trustee) of the third part Whereas [recite the settlement
or will under which A. B. is tenant for life with remainder to
his first and other sons successively in tail and the power of sale
therein contained, with the direction that the monies to be received
on such sales are to be laid out in the purchase of other lands
to be settled to the same uses and in the meantime to be invested
in government or real securities] And whereas part of the lands
and hereditaments comprised in the said recited indenture [or
“devised by the said recited will as aforesaid”] have with the
consent of the said A. B. been sold and conveyed in pursuance
of the power contained in the said recited indenture [or “will”]
and the monies arising from such sales have been laid out and
invested in the purchase of £ Three per Cent. Consolidated
Bank Annuities which sum is now standing in the names of the
said (trustees) in the books of the Governor and Company of
the Bank of England And whereas the said C. D. is the eldest
son of the said A. B. and attained the age of twenty-one years
on the day of now last past and is desirous of
acquiring the absolute interest in the said Bank Annuities
subject and without prejudice to the limitations in the said
recited indenture [or “will”] contained antecedent to the estate
tail of the said C. D. Now this Indenture witnesseth That for
the purpose of defeating the estate tail of the said C. D. by
virtue of the said recited indenture in the Bank Annuities hereby
assigned or intended so to be or of and in the lands directed
to be purchased with the said sum of £ and all reversions
remainders estates rights titles interests and powers to take
effect after the determination or in defeasance of the said estate
tail He the said C. D. with the consent of the said A. B.
[testified by his being a party to and executing these presents]
Doth by these presents assign unto the said E. F. his executors
administrators and assigns all that the said sum of £*

Of sale of
lands.

Of desire of
tenant in tail
to acquire ab-
solute interest.

Assignment
with protector's
consent.

Three per Cent. Consolidated Bank Annuities and all other the monies which have been received or have arisen from any sale or sales made in pursuance of the power contained in the said recited indenture [*or "will"*] and all stocks funds and securities in or upon which the same monies or any part thereof have been laid out and invested And all the estate right title interest claim and demand at law or in equity of the said C. D. of in to out of or upon the said premises or any part thereof *To have and to hold* the said Bank Annuities and all and singular other the premises hereby assigned or intended so to be unto the said E. F. his executors administrators and assigns freed and absolutely discharged of and from the trusts powers and authorities in and by the said in part recited indenture [*or "will"*] expressed and declared and from the estate tail of him the said C. D. and all other estates rights interests and powers to take effect after the determination or in defeasance of such estate tail but subject and without prejudice to the limitations of the said recited indenture [*or "will"*] antecedent to the said estate tail Upon the trusts following (that is to say) in trust to permit the said A. B. to receive the dividends and annual proceeds of the said Bank Annuities during his life and subject thereto In trust for the said C. D. his executors administrators and assigns for his and their own use absolutely [*or in some cases the following form should be adopted*] To the intent that the said E. F. may by the indenture already engrossed and endorsed in these presents re-assign the same sum of £ Three per Cent. Consolidated Bank Annuities and all other the premises hereby assigned or intended so to be unto the said C. D. his executors administrators and assigns as his personal estate *In witness &c.*

No.
CCCXCIV.
*Of Entailed
Trust Money.*

Habendum.

Trusts.

No. CCCXCV.

Re-assignment to be endorsed on No. CCCXCIV.

This Indenture made &c. Between the within named (*trustee*) of the one part and the within named (*tenant in tail*) of the other part being the indenture referred to by the within written indenture *Witnesseth* that the said (*trustee*) doth by these presents assign unto the said (*tenant in tail*) his executors

No. CCCXCV.
*Re-assignment
of Entailed
Trust Money.*

No. CCCXCV.

*Re-assignment
of Entailed
Trust Money.*

administrators and assigns All the monies stocks funds securities and other the premises by the within written indenture assigned to the said (*trustee*) his executors administrators and assigns And all the right title and interest of the said (*trustee*) in or to the same premises *To have and to hold* the said monies stocks funds securities and premises hereby assigned or intended so to be [discharged and subject in such manner as in the within written indenture is expressed] unto the said (*tenant in tail*) his executors administrators and assigns as his personal estate *In witness &c.*



No. CCCXCVI.

No.
CCCXCVI.
*Relinquishment
of Protectorship.*

*Relinquishment of Protectorship and Appointment of a New
Protector.*

Obs. As to the enrolment of this deed, see Pref. sect. 8.

To all &c. A. B. of &c. and C. D. (*a*) of &c. protectors nominated in and by a certain indenture of &c. [*or* “will”] bearing date &c. send greeting *Whereas* (*b*) the said A. B. is desirous of relinquishing the protectorship and by virtue of the power given to them the said A. B. and C. D. by the statute in that behalf made and provided they the said A. B. and C. D. have nominated E. F. of &c. in the place of the said A. B. *Now know ye* That the said A. B. doth hereby relinquish and resign the office of protector and all the powers and authorities given to him by the said indenture &c. [*or* “will”] in that behalf *And* that they the said A. B. and C. D. do hereby nominate and appoint the said E. F. to act conjointly with the said C. D. as protector to all intents and purposes as fully and amply as the said A. B. could or might have done if these presents had not been made *In witness &c.*

(*a*) If one of the protectors is dead, say, “(*surviving protector*) one of the protectors nominated &c.”

(*b*) If one of the protectors is dead, say, “the said A. B. departed this life on or about the &c. and by virtue of the power given to him the said C. D. by &c.” (*as above*).



No. CCCXCVII.

No.
CCCXCVII.

Memorandum to be endorsed or written at the Foot or in the Margin of the Deed, to be acknowledged by Married Women, under the 3 & 4 Will. 4, c. 74, s. 84.

*Memorandum of
Acknowledg-
ment.*

This deed marked with the letter [A. or other mark for the purpose of identification] was this day produced before me [or "us"] and acknowledged by M. the wife of R. L. therein named to be her act and deed previous to which acknowledgment the said M. L. was examined by me [or "us"] separately and apart from her husband touching her knowledge of the contents of the said deed and her consent thereto and declared the same to be freely and voluntarily executed by her.



No. CCCXCVIII.

No.
CCCXCVIII.

Certificate of the taking such Acknowledgment, to be written upon a separate Piece of Parchment, and signed by the Judge, Master in Chancery or Commissioner.

*Certificate of
Acknowledg-
ment.*

These are to certify That on the day of in the year of 18 before me the undersigned Sir Alexander Edmund Cockburn Lord Chief Justice of the Court of Common Pleas [or "before me Sir Knight one of the Justices of the Court of Queen's Bench at Westminster" or "before me the undersigned judge of the County Court holden at "(a) or "before us A. B. and C. D. two of the perpetual commissioners appointed for the for taking the acknowledgments of deeds by married women pursuant to an act passed in the fourth year of the reign of his late Majesty King William the Fourth intituled 'An Act for the Abolition of Fines and Recoveries and for the Substitution of more simple Modes of Assurance'"'] appeared personally M. the wife of R. L. and produced a certain indenture marked A. bearing date the day of 18 and made between [insert the names of the parties] And acknowledged the same to be her act and deed And I [or "we" do hereby certify that

(a) 19 & 20 Vict. c. 108, s. 73; Broom's Pr. of the County Courts, pp. 566—572, 2nd ed.

No.
CCCXCVIII.
*Certificate of
Acknowledg-
ment.*

the said M. L. was at the time of her acknowledging the said deed of full age and competent understanding and that she was examined by me [*or* "us"] apart from the said R. L. her husband touching her knowledge of the contents of the said deed and that she freely and voluntarily consented to the same (*a*).

(*Signatures.*)

Affidavit verifying the Certificate of Acknowledgment, see *ante*, No. XXVII., pp. 53, 54; and other forms, Shelford's Real Prop. Stat. App. XI.—XV., 6th edit., and Affidavit in the County Courts, Broom's Pr., pp. 570, 571, 2nd ed.

DISTRESS.

SECT. 1. A distress is the taking of a personal chattel out of the possession of a wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed, 3 Bl. Comm. 61. The recovery of rent in arrear is the principal cause of distress, but there are many other causes at common law, as for suits and services at the lord's court, beasts found *damage feasant*, &c. For several duties and penalties inflicted by special acts of Parliament, as for assessments for the relief of the poor, for the repair of highways, and many other purposes the remedy by distress and sale is given. The making a distress being considered as a legal demand, no other demand is requisite to give the landlord a right to distress, unless the reservation in the lease or the statute authorizing a distress require a special demand.

2. By the 3 & 4 Will. 4, c. 27, s. 2, no distress can be made for the recovery of land or rent, but within twenty years after the right of making such distress or entry shall have accrued. By the 42nd sect.

(*b*) By the Rules of the Court of Common Pleas, of M. T. 1833, there was added to the certificate a specification of the localities: "*And I [or 'we'] do further certify that the several premises comprised in the said in part recited indentures are situate in the several parishes or places following (that is to say) in the parish &c.*" By the Rules of H. T. 1834, this specification is transferred to the affidavit, which see *ante*, p. 54.

of the same act no arrears of rent shall be recovered by any distress but within six years next after the same became due, or next after an acknowledgment in writing. See Shelford's Real Prop. Stat., pp. 255—265, 6th ed.

3. The several proceedings upon a distress will be more fully explained under the following forms, none of which require any stamp. See Woodfall's L. & T., B. II. Ch. II.; B. IV. Ch. VII., 7th ed.

Distress.

No. CCCXCIX.

Warrant of Distress.

No.
CCCXCIX.
Warrant.

Obs. A warrant of distress is the written authority given to a bailiff to distrain by the person to whom the rent is due. Nothing less than a writing (it is presumed, in the absence of any express decision on the subject) is sufficient to give this authority, but it is not necessary to be by deed, *Anon.*, 1 Salk. 191. It must, however, be signed by the person (or, if several, by all the persons) entitled to the rent, under whom the bailiff may afterwards justify, or, as it is termed, make cognizance in the replevin.

I hereby authorize and require you to distrain the goods and chattels of A. B. (*the tenant*) in the dwelling house [*or* “in and upon the farm” *or* “lands”] and premises of A. B. situate at
in the county of for £ being years
rent due to me for the same at last and to proceed thereon
for the recovery of the said rent as the law directs Dated the
day of 18

To E. F. my bailiff

Yours &c.

C. D.

No. CCCC.

An Inventory of the Goods distrained.

No. CCCC.
Inventory.

Obs. As soon as the distress is made, an inventory should be prepared.

An inventory of the [“cattle and the”] several goods and chattels distrained by me [*or if as bailiff say* “as bailiff to Mr. C. D.”] this day of in the year of our Lord 18
in the dwelling house [*or* “farm” *or* “lands”] and premises of
A. B. situate in the parish of in the county of [*if by*

No. CCCC. *the bailiff say* “by the authority and on the behalf of the said
Inventory. C. D.”] for the sum of £ being years rent due to
me [*or* “to the said C. D.”] at last and as yet in arrear
and unpaid
In the dwelling house
In the kitchen *one table &c.* [*set out the things fully.*]

NOTICES OF DISTRESS.

- | | | |
|-------------------------------------|--|-----------------------------|
| 1. <i>Notice to be added to In-</i> | \| | <i>Contents of Notice.</i> |
| <i>ventory.</i> | | 3. <i>Place of Removal.</i> |
| 2. <i>Parol or written.</i> | | 4. <i>Sale of Distress.</i> |

Notice to be added to inventory. Parol or written.	SECT. 1. The notice of distress ought to be subjoined to the above inventory.
Contents of notice.	2. The 2 Will. & Mary, c. 5, which requires notice to be given to the tenant, does not require it to be given in writing, and consequently a parol notice is good, <i>Walker v. Rumbald</i> , 12 Mod. 76; but if it be not given personally, it should be left in writing at the tenant's house or other most notorious part of the premises charged with the rent. The notice need not state precisely when the rent became due, <i>Moss v. Gallimore</i> , 1 Dougl. 279; nor need the cause of taking to be particularly expressed, <i>Crowther v. Ramsbottom</i> , 7 T. R. 654; <i>Ether-ton v. Popplewell</i> , 1 East, 142.
Place of removal.	3. If the goods are removed, it must be stated in the notice where they are removed to.
Sale of distress.	4. Distress for rent being in the nature of a pledge, the distrainor had no power to sell by the common law; but by the 2 Will. & Mary, and the 11 Geo. 2, c. 19, the distrainor is empowered to sell at the end of the fifth day.

No. CCCCI.

General Form. *Notice of Distress (General Form).*

Mr. A. B.

Take notice that I [*or* “I as bailiff of Mr. C. D. your landlord”] have this day distrained on the premises above men-
tioned the [cattle] goods and chattels specified in the above
inventory for the sum of £ being years rent due to

me [*or* “to the said ”] And that unless you pay the said No. CCCCI.
 arrears of rent with the charges of distraining for the same or *General Form.*
 replevy the said goods and chattels within five days from the
 date hereof the said [cattle] goods and chattels will be ap-
 praised and sold according to law Given under my hand
 this day of 18

C. D.

No. CCCCI.

Another for Arrears of a Rent-charge.

No. CCCCI.
Another Form.
(Rent-charge.)

Mr. A. B.

Take notice that by the order and on behalf of C. D. I
 have this day taken and distrained in and upon the farm and
 lands called in your occupation in the parish of in
 the county of all the corn grain and effects in the inventory
 hereunder written mentioned for the sum of £ being
 years annuity or rentcharge of £ per annum due
 to the said C. D. at last and charged on and issuing and pay-
 able out of certain manors farms land and premises called
 in the parish of in the county of aforesaid of which
 the farm and lands first above mentioned are part and parcel
 and that unless the said arrears of the said annuity or rent-
 charge together with the expenses of this distress be paid and
 satisfied the said corn grain and effects will be disposed of
 according to law Given &c.

To Mr. A. B. and all whom it may concern.

No. CCCCI.

Another for Growing Crops.

No. CCCCI.
Growing Crops.

Obs. Corn could not be taken in distress after it was cut until the
 2 Will. & Mary, c. 5, s. 3, nor growing crops until the 11 Geo. 2,
 c. 19, s. 8. The latter statute requires notice to be given to or left for
 the tenant of the place where the goods are lodged within one week.
 As to the sale of growing crops by the sheriff, see 56 Geo. 3, c. 50.

Mr. A. B.

Take notice that I [*or* “I as bailiff of” &c.] have this day
 distrained on the lands and premises above mentioned the several

No. CCCCIH. growing crops specified in the inventory for the sum of £
Growing Crops. being two quarters' rent due to me [or "to the said C. D."]
 at last for the said lands and premises and unless you
 previously pay the said rent with the charges of distraining for
 the same I shall proceed to cut gather make cure carry and lay
 up the crops when ripe in the barn [or "in some other proper
 place on the premises" or "in the barn situate at" *as the case
 may be*] And in convenient time sell and dispose of the same
 towards satisfaction of the said rent and of the charges of such
 distress appraisement and sale according to the form of the
 statute in such case made and provided Given &c.

—◆—

No. CCCCIIV.

No. CCCCIIV.

*Notice to
 Sheriff.*

Notice to the Sheriff of the Landlord's Claim for Rent.

Obs. As goods already taken in execution cannot be distrained,
 the landlord, in that case, must give notice to the sheriff, under the
 8 Anne, c. 14. None but the immediate landlord can give such
 notice, the statute not entitling the ground landlord to his rent,
Bennet's case, 2 Stra. 787. And where the landlord omits to give
 this notice, the sheriff is not bound to retain the rent on his account,
Waring v. Dewberry, 1 Stra. 95; *Palgrave v. Windham*, *Ib.* 214.

To A. B. Esquire

I do hereby give you notice that there is now due to me
 from C. D. the person to whom certain goods belong of which
 you are now in possession under and by virtue of a writ of *feri
 facias* [or "*elegit*" &c. *as the case may be*] returnable &c. the sum
 of £ for the rent of one year [or *other less period of time*]
 and which sum I hereby give you notice to pay to me before
 such goods be removed from the premises Dated &c.

E. F. landlord.

—◆—

No. CCCCV.

No. CCCCV.

*Consent by
 Tenant.*

*Consent by a Tenant that Goods distrained may remain on the
 Premises beyond the Time allowed by Law.*

Obs. By the common law it was the duty of the distrainor to re-
 move the goods from the premises within a convenient time; but by

the 11 Geo. 2, c. 19, amending the 2 Will. & Mary, the landlord is authorized to impound the goods distrained in any convenient part of the tenant's ground, to remain there during the space of five days, when they are to be sold, unless sooner replevied by the tenant. If under this act the goods remain longer than the five days without the tenant's consent, the landlord is a trespasser, *Griffin v. Scott*, 1 Ld. Raym. 142; *S. C.* 2 Stra. 717; *Dod v. Monger*, 6 Mod. 215. It is usual for the tenant to give his consent for their remaining longer on the premises in the custody of the distrainer, or a person appointed by him for that purpose, and this consent ought to be in writing.

No. CCCCIV.

Consent by
Tenant.

Memorandum—That I A. B. do hereby consent and agree that C. D. my landlord who hath distrained my goods and chattels in the said dwelling &c. situate at in the county of shall continue in possession of my goods and chattels in the said dwelling house for the space of days from the date hereof he the said C. D. having agreed to forbear the sale of the said goods and chattels for the same space of time to enable me to discharge the said rent And I the said A. B. do hereby agree to pay the expenses of keeping the said possession As witness my hand the day of in the year &c. A. B.

APPRAISEMENTS.

Obs. Before the goods are sold, the 2 Will. & Mary, sess. 1, c. 5, s. 2, requires them to be appraised by two sworn appraisers, whom the sheriff, under-sheriff or constable may swear. The oath must be administered in the presence of some person who is to attest it. To prevent ruinous and excessive charges in the execution of distresses for rents where the sum demanded and due shall not exceed 20*l.*, the 57 Geo. 3, c. 93, limits the charges as follows, namely, for levying the distress, 3*s.*; man in possession, 2*s.* 6*d.* per day; appraisement, 6*d.* in the pound on the value of the goods; stamp, the lawful amount thereof (*i. e.* 2*s.* 6*d.*); advertisements, if any, 10*s.*; catalogues, sale, &c., 1*s.* in the pound on the net produce of the goods. And a copy of the charges must be given to the person distrained upon.

No. CCCCVI.

Oath administered to the Appraisers.

Obs. The constable or the person administering the oath holds the inventory in his hand.

No. CCCCVI.

Oath to
Appraisers.

No. CCCCIX.

Power of Attorney to distrain.

Know all Men by these Presents That I A. B. of &c. do by these presents make &c. C. D. of &c. and E. F. of &c. my true and lawful attornies and attorney and in my name place or stead to enter into and upon all that messuage &c. situate &c. and now in the occupation of G. H. his under tenants or assigns and held by him of me at or under the yearly rent of £ and to make or cause to be made one or more distress or distresses of all or any hay corn goods chattels beasts sheep or other effects or things whatsoever standing lying or being in and upon the said demised premises or any part thereof for all such rent or rents that was or were and now is due and owing to me up to Michaelmas day last past for or on account of the said premises or any part thereof and such distress or distresses when made or taken for me and on my behalf to hold detain and keep until payment and satisfaction to be made for all such rent due and in arrear to me and all costs and charges of making such distress *And* in case of nonpayment thereof within the time limited by the laws now in force to appraise sell and dispose of the same or cause the same to be appraised sold and disposed of according to law I the said A. B. giving and granting unto my said attornies and attorney jointly and severally full power and authority for me and in my name and behalf to do or cause to be done all such acts touching and relating to the said premises as fully &c. And whatsoever my said attornies or attorney or either of them shall lawfully do or cause to be done in or about the premises I hereby for myself my heirs executors and administrators agree to allow ratify and confirm *In witness &c.*

No. CCCCIX.

*Power of
Attorney to
distrain.*

No. CCCCX.

Warrant to distrain for Copyhold Rents.

The manor S. in the } *Memorandum*—This day of
 } in the year &c. I G. L. esq. lord of
 the said manor of S. have made constituted &c. R. L. of &c. my

No. CCCCX.

*Warrant to
distrain.*

No. CCCCX.

*Warrant to
distrain.*

true and lawful attorney and bailiff to demand and receive of all and every my copyhold tenants the several and respective rents to me due and in arrears And I do hereby authorize him the said R. L. to levy the said copyhold rents by distress of the goods and chattels of the several persons who shall refuse or neglect to pay the same And I desire all my copyhold tenants and others within the said manor to be aiding and assisting to my said bailiff in discharge of his said office *In witness &c.*

No. CCCCXI.

Distress Rent-charge in lieu of Tithes.

No. CCCCXI.

*Rent-charge in
lieu of Tithes.*

Obs. When a rent-charge in lieu of tithes shall be in arrear, and unpaid for the space of twenty-one days next after any half-yearly day of payment, the person entitled to the same may, after having given or left ten days' notice in writing at the usual or last known residence of the tenant in possession, distrain upon the lands liable to the payment thereof, or on any part thereof, for all arrears of such rent-charge, and may dispose of the distress when taken, and otherwise act in relation thereto as any landlord may for arrears of rent reserved on a common lease for years; but no more than two years' arrears shall at any time be recoverable by distress, 6 & 7 Will. 4, c. 71, s. 81.

Service of
notice.

The service of notice to distrain upon any person occupying or residing on the land chargeable with the rent-charge, or in case no person shall be found thereon, then affixing the same in some conspicuous place on the land shall be deemed good service of such notice, 5 & 6 Vict. c. 54, s. 17.

*Power of
Attorney to
recover Tithe
Rent-charge.**Power of Attorney from Rector to recover Rent-charge in
lieu of Tithes.*

Know all Men by these Presents That rector of the parish of in the county of doth by these presents make constitute and appoint A. his true and lawful attorney for him and in his name and on his part and behalf and for his use to ask demand sue for recover and receive all and all manner of rents charge in lieu of tithes sum and sums of money which are now due and owing or which at any time hereafter shall or may become due or payable to him from any person whomsoever upon any account for or by reason or in respect of any rents

charge payable in lieu of such tithes in the said parish of or for or by reason of any arrears thereof and on receipt or payment of any such rents charge in lieu of tithes sum or sums of money as aforesaid or of any arrears thereof for him and in his name to sign and give such releases acquittances and discharges for the same as the circumstances of the case may require which receipts shall effectually discharge all such persons to whom the same shall be given from the sum and sums therein respectively acknowledged to have been received *And further* for him the said (*rector*) and in his name from time to time upon the neglect or refusal of any person or persons to pay and satisfy all or any of such rents charge in lieu of tithes and arrears thereof which are now or shall or may hereafter be due and owing to him to commence prosecute and carry on and make all such actions suits distresses or other proceedings whatsoever for giving effect to all or any of the powers hereby granted as the said attorney shall think expedient and from time to time to suspend or discontinue such proceedings as he shall see cause or think fit *And further* for him and in his name and as his act and deed in due form of law to execute and deliver all and all manner of deeds instruments receipts notices and writings which he the said (*rector*) doth hereby declare shall have the same force and effect as if the same had been executed and delivered by him the said (*rector*) by his own proper person *And further* to do perform and execute all such other acts matters and things whatsoever as shall or may be requisite or necessary in or about the premises And the said (*rector*) doth hereby for himself his heirs executors and administrators undertake and agree at all times to ratify and confirm all and whatever his said attorney shall do or cause to be done in pursuance of the powers hereby granted *And further* to save harmless and keep indemnified the said attorney his heirs executors and administrators from and against all costs losses damages and expenses which he or they may sustain or be put to for or by reason of his or their lawful acting and proceeding in pursuance of these presents *In witness &c.*

No.
CCCCXI.
*Power of
Attorney to
recover Tithe
Rent-charge.*

No.
CCCCXII.

*Notice to dis-
train for Tithe
Rent-charge.*

No. CCCCXII.

Notice to distrain.

I hereby give you notice that the sum of £ being rent-charge in lieu of tithes due to me on the day of last in respect of the sum of £ charged by the instrument of apportionment for the parish of P. in the county of on certain lands therein described as the property of and in the occupation and which lands are now in your occupation is in arrear and unpaid And I do hereby further give you notice that unless the same be paid to me on or before the day of next I shall proceed to distrain upon the lands liable to the payment thereof pursuant to the statute in that case made and provided Given under my hand this day of A.D. 18

Rector by

his Attorney.

To Mr.

The tenant in possession.



No.
CCCCXIII.

*Warrant to dis-
train for Tithe
Rent-charge.*

No. CCCCXIII.

Warrant of Distress.

Mr.

I hereby authorize and empower you to seize and distrain the goods and chattels of for the sum of £ being rent-charge in lieu of tithes due to me on the day of last in respect of the sum of £ charged by the instrument of apportionment for the parish of P. in the county of on certain lands therein described as the property of and in the occupation of and which lands are now in the occupation of and for your so doing this shall be your sufficient warrant and indemnification against all actions and suits at law

Dated this day of A.D. 18

Yours &c.

Rector

by his Attorney

Owner of the rent-charge.



No. CCCCXIV.

*Deputation to grant Replevins.*No.
CCCCXIV.*Deputation to
grant Replevins.*

Obs. 1. A replevin is a remedy grounded on a distress, being a redeliverance of the thing distrained to remain with the first possessor. The writ, or action of replevin, is also called a replevin. As to proceedings on distress and replevin in Queen's Bench, &c., see Chitty's Forms, pp. 556—595, 8th ed.; in the County Court, Broom's Pr. of County Courts, pp. 272—281, 2nd ed.

2. By the 1 & 2 Phil. & Mary, c. 12, s. 3, a sheriff is required to make four deputies at least to grant replevins for the ease of the county.

Know all Men by these Presents That I A. B. esquire high sheriff of the county of [or "county palatine"] do hereby appoint C. D. gentleman one of the deputies for making or granting replevins within the said county pursuant to the statute in that case made and provided And for so doing this shall be a sufficient warrant and authority Given under the seal of my office of sheriff the day 18

By the same

A. B. sheriff.

No. CCCCXV.

Replevin Bond.

No. CCCCXV.

Replevin Bond.

Obs. The 11 Geo. 2, c. 19, s. 23, requires the sheriff to take a bond from the person distrained upon, and two sureties. This bond does not require a stamp, 5 Geo. 4, c. 41. See Chitty's Forms of Proceedings in Queen's Bench, &c., pp. 558—563, 8th ed.

Know all Men by these Presents That we A. B. of &c. C. D. of &c. and E. F. of &c. are jointly and severally held and firmly bound to S. S. esquire sheriff of the county of in the sum of £ [*a sufficient sum to cover the value of the cattle or goods distrained, if taken damage feasant, or if for rent, then double the value of the cattle or goods taken, to be ascertained on the oath of one witness*] to be paid to the said sheriff or his certain attorney executors administrators or assigns for which payment to be well and truly made we bind ourselves and each and every of us in the whole our and each and every of our heirs executors and administrators firmly by these presents Sealed with our seals

DOWER.

- | | |
|--|---|
| 1. <i>Seisin not necessary to give a Title to Dower.</i> | 2. <i>Old and new Modes of barring Dower.</i> |
| | 3. <i>Extinguishment of Dower.</i> |

SECT. 1. Seisin, either in law or in fact, was, under the old law, absolutely necessary to give a woman a title to dower out of her husband's lands; a mere right would give no such title; but now, by the 3 & 4 Will. 4, c. 105, s. 3, when a husband is entitled to a right of entry or action in respect of any lands, and the widow asserts her claim within the time limited by law, she will, provided they have been married since the 1st of January, 1834, be entitled to dower out of such lands, although the husband shall not have obtained possession thereof. So, likewise, under the old law, a woman was not dowerable of a trust estate, nor of an equity of redemption; but now, by the 3 & 4 Will. 4, c. 105, s. 2, the distinction between legal and equitable estates, as to the right of dower, is done away. See *Shelford's Real Prop. Stat.* pp. 416—431, 6th ed.

Seisin not necessary to give a title to dower.

2. As the seisin of the husband, at any time during the coverture, gave the wife a title to dower, it was formerly the practice, in the conveyance of any lands, to convey the estate in such manner as to prevent the legal estate from vesting in the purchaser during his life, so as to make the land subject to his wife's dower; but now, by the Act (sect. 6), any declaration in a deed executed by the husband during his life, will have the effect of defeating the wife's right to dower; but the right of any widow to dower who was married on or before the 1st of January, 1834, cannot be defeated by any other than the old form of limitations to uses. Such a limitation, however, will not have the effect of barring, under the new Act, the dower of any after-taken wife. See *Fry v. Noble*, 7 De G., M. & G. 687; 24 Law J., Chan. 591; 25 Law J., Chan. 144; 19 Jur. 767. To prevent questions arising as to the fact of a purchaser having been married before the 1st of January, 1834, it has been usual to convey the property to the old uses to bar dower, with a declaration by the purchaser that no widow whom he shall leave shall be entitled to dower out of the premises.

Old and new modes of barring dower.

3. Where a right of dower has already attached, in the case of a woman married on or before the 1st of January, 1834, the deed releasing her right of dower must be acknowledged by her in the manner required by the 3 & 4 Will. 4, c. 74, being the Act for the Abolition of Fines and Recoveries. See *ante*, p. 914, pl. 7, and No. CCCLXXXIII., pp. 915—917.

Extinguishment of dower.

No.
CCCCXVII.

No. CCCCXVII.

*Limitation to
bar Dower.*

*Form of Limitation to bar the Dower of a Woman married on or
before the 1st January, 1834.*

To such uses upon such trusts for such estates and interests and in such manner as the said (*purchaser*) shall by any deed or deeds with or without power of revocation and new appointment from time to time or at any time appoint And in default of and until such appointment and so far as any such appointment shall not extend to the use of the said (*purchaser*) and his assigns during his life without impeachment of waste And after the determination of that estate by any means in his lifetime To the use of the said (*trustee*) and his heirs during the life of the said (*purchaser*) in trust for the said (*purchaser*) and his assigns And after the determination of the estate so limited to the said (*trustee*) and his heirs as aforesaid To the use of the said (*purchaser*) his heirs and assigns for ever And the said (*purchaser*) doth hereby declare that if he shall die leaving a widow such widow shall not be entitled to dower out of or in the said premises or any part thereof.

ENFRANCHISEMENTS.

- | | |
|--------------------------------------|-----------------------------------|
| 1. <i>What is Enfranchisement.</i> | 3. <i>Statutes for effecting.</i> |
| <i>How effected.</i> | 4. <i>Stamp Duty.</i> |
| 2. <i>Effect of Enfranchisement.</i> | |

What is enfranchisement.

How effected.

SECT. 1. Enfranchisement is the changing of the tenure from base to free, and it is effected by the lord's conveying to the tenant the freehold of the particular and specific premises which were held by copy, or by releasing to the tenant his seignorial rights, 1 Watk. Cop. 362; 1 Scriv. Cop. 653, 3rd ed. This may be effected by any conveyance sufficient to pass an estate of freehold; but the conveyance by way of enfranchisement should always be made to the copyholder, and not to a trustee, for in this latter case the inheritance only becomes severed from the manor, but the copyhold interest remains, *Murrell v. Smith*, 4 Co. 24 b; *Beale v. Langley*, 2 Leon. 208; *Dancer v. Evett*, 1 Vern. 392; 1 Scriv. Cop. 655. The heir of a copyholder may accept an enfranchisement before admittance, but it is question-

able whether the surrenderee or devisee of copyholds can accept an enfranchisement before admittance, *Wilson v. Allen*, 1 Jac. & W. 611. Enfranchise-
ments.

2. Immediately on the lands being enfranchised in fee, they become severed from the manor; and the tenure being extinct as to the enfranchising lord, he cannot reserve to himself any services on such enfranchisement, *Bradshaw v. Lawson*, 4 T. R. 443; 1 Watk. Cop. 449, Cov. edit. So all customs which attach to the copyhold tenure will cease, *Ibid.* And all rights and privileges annexed to the copyholder's estate, as common of pasture or estovers in right of his copyhold, become extinct, unless they be expressly reserved to the copyholder in the deed of enfranchisement, *Barwick v. Matthews*, 5 Taunt. 365; *S. C.* 1 Marsh. 50; 1 Watk. 452. But in *Styant v. Staker*, where the lord enfranchised a copyhold with all common thereunto belonging, the court held that though the common was in this case extinct in law, yet that it subsisted in equity; and it was decreed that the plaintiff should have the same right of common as belonged to the copyholder, 2 Vern. 250; 1 Scriv. Cop. 659, 3rd ed. If a copyholder hath had immemorially a right of way over another's copyhold, and he purchaseth the inheritance of his own copyhold, yet the way remains, as it is the tenure only that is altered by the enfranchisement, 7 Roll. Abr. 933; *Lex Cust.* 233; *Hard.* 131. Effect of en-
franchisement.

3. Several statutes have been passed and are now in operation under which either the lord or tenant may require the compulsory enfranchisement of copyholds. See *Shelford's Law of Copyholds and the Supplement*, which contains all the Copyhold Acts, and the forms and directions of the Copyhold Commissioners. Statutes for
effecting.

4. A deed of enfranchisement for a pecuniary consideration requires the same *ad valorem* stamp as any other conveyance on a sale. See *ante*, pp. 879, 880. Stamp duty.

No. CCCCXVIII.

Deed of Enfranchisement by Lord of a Manor seised in Fee (a).

This Indenture made the day of &c. Between A. Z. of &c. lord of the manor of in the county of of the one part and C. D. of &c. one of the copyhold tenants of the aforesaid manor of the other part Whereas the said A. Z. is seised of and well entitled to the said manor of for an estate of inheritance in fee simple in possession free from all incumbrances And whereas the said C. D. at a court baron or customary court

No.
CCCCXVIII.
By Lord seised
in Fee.

Recitals that
lord is seised
in fee.

Admission of
tenant.

(a) See *Scriv. on Copyh.*, pp. 895—900.

No.
CCCCXVIII.
*By Lord seised
in Fee.*

Contract to
enfranchise.

Reservation of
coal mines.

holden for the aforesaid manor on the day of was
admitted on the surrender of E. F. of &c. to all and singular
the copyhold messuages lands and hereditaments hereinafter de-
scribed and intended to be hereby granted released and enfran-
chised with their appurtenances to hold the same unto him the
said C. D. and his heirs by copy of court roll, at the will of the
lord according to the custom of the manor of aforesaid
And whereas the said C. D. hath contracted and agreed with
the said A. Z. for the enfranchisement of the said copyhold
messuages lands and hereditaments hereinafter described [sub-
ject as hereinafter mentioned] at or for the price or sum of
£

Now this Indenture witnesseth That in pursuance and
performance of the said recited contract and in consideration of
the sum of £ of lawful money of Great Britain unto the

said A. Z. in hand paid by the said C. D. at or before the seal-
ing and delivery of these presents the receipt whereof the said
A. Z. doth hereby acknowledge and from the same and every
part thereof doth acquit release and discharge the said C. D. his
heirs executors administrators and assigns and every of them
for ever by these presents he the said A. Z. doth by these pre-
sents grant alien release and enfranchise unto the said C. D. his
heirs and assigns *All &c.* together with all outhouses ways
&c. to the said messuages lands hereditaments and premises be-
longing or in anywise appertaining or therewith used occupied
or enjoyed or accepted reputed deemed taken or known as part
parcel or member thereof or any part thereof and the reversion
and reversions remainder and remainders yearly and other rents
issues and profits thereof and all the estate right title interest
freehold inheritance use trust benefit property power claim and
demand whatsoever of the said A. Z. in to or out of the same

premises and every part thereof [save and except and reserving
unto the said A. Z. his heirs and assigns out of this present
grant release and assurance all coal mines veins and seams of
coal and all other mines metals and minerals whatsoever and all
quarries of stone with full liberty and power for the said A. Z.
his heirs and assigns and his and their workmen servants and
agents at his and their free will and pleasure to search for dig
work and carry away the same and for the better working the
same mines and quarries to erect furnaces engines smelting
houses and other requisite buildings and to make lay down and
continue any railway and to make drains sluices and cuts and
do every other act necessary or expedient for raising and carry-

ing away all such coals metals minerals and stone doing as little injury as may be to the soil of the said copyhold premises and making a reasonable compensation for the damage which may be sustained by the owners or occupiers of the same premises by reason of the exercise of the privilege hereby excepted and reserved And save and except also and reserving in like manner as aforesaid such free liberty of hunting fishing and fowling and all such waifs estrays and other royalties privileges liberties franchises and seignorial rights and immunities not hereby expressly granted released and extinguished as have been at any time heretofore exercised or enjoyed by the said A. Z. or any of his ancestors or predecessors lords of the aforesaid manor and as fully to all intents and purposes as the said A. Z. his heirs or assigns could or might have used exercised or enjoyed the same if these presents had not been made and executed] *To have and to hold* the said messuages lands and all and singular other the hereditaments and premises hereby granted released and enfranchised or intended to be with their and every of their appurtenances [except as hereinbefore excepted] unto the said C. D. his heirs and assigns to the use and behoof of the said C. D. his heirs and assigns for ever freed and absolutely acquitted exonerated and discharged henceforth and for ever hereafter of and from all and all manner of customary fines heriots rents fealty suit of court amercements forfeitures and other customary payments duties services and penalties whatsoever which by or according to the custom of the manor of aforesaid the said messuages lands hereditaments and premises hereinbefore described or any of them are or is or have or hath been subject or liable to or charged with or which would otherwise be payable or to be done and performed to the lord or lady lords or ladies for the time being of the said manor of for or in respect of the same hereditaments and premises as copyhold holden of the aforesaid manor (a) *Provided always* and it is hereby declared to be the true intent and meaning of the said parties hereto that nothing in these presents contained is meant to extend to the enfranchisement of or shall be deemed construed or adjudged to en-

No.
CCCCXVIII.
*By Lord seized
in Fee.*

Habendum.

Free from fines,
&c.

Proviso that
this deed shall
not extend to
the copy-
holds (b).

(a) By omitting the clauses between the brackets here and in p. 956, (by which mines, &c., are excepted out of the grant, and reserved to the lord,) this precedent will serve for a more ordinary deed of enfranchisement.

(b) This proviso should, of course, be omitted where the tenant retains no other copyholds.

No.
CCCCXVIII.
*By Lord seised
in Fee.*

Regrant of
right of com-
mon (a).

Covenants for
title to manor.

franchise any part or parts of the copyhold hereditaments lying within and holden by the said C. D. of the said manor of [other than and except the messuages lands hereditaments and premises hereinbefore described] or to acquit release or discharge the same premises [other than except as aforesaid] from any fines heriots rents fealty suit of court amercements forfeitures payments duties services or penalties which by or according to the custom of the aforesaid manor the same premises have at any time heretofore been subject or liable to or charged with or which have been or ought to have been paid done or performed for or in respect of the same premises as copyhold holden of the manor of aforesaid *And this Indenture also witnesseth* That for the considerations aforesaid and in order to preserve to the said C. D. his heirs and assigns all such rights of common in upon and over the waste lands of the manor of aforesaid as he the said C. D. or any of his ancestors or predecessors hath or have heretofore used and enjoyed as belonging or appurtenant to the messuages lands and hereditaments hereinbefore described notwithstanding the enfranchisement of the same respective hereditaments he the said A. Z. doth by these presents grant and confirm unto the said C. D. his heirs and assigns for ever all such commonage and right or title to common of what nature or kind soever in upon and over all or any of the wastes commons and commonable lands of or belonging to the manor of aforesaid as he the said C. D. immediately previous to the execution of these presents or as any of his ancestors or predecessors held possessed or enjoyed in respect of and as appurtenant or belonging to all or any part of the messuages lands hereditaments and premises hereby enfranchised or intended so to be and the freehold and inheritance of all such commonable rights as aforesaid in as large ample and beneficial a manner to all intents and purposes as he the said C. D. or any of his ancestors or predecessors hath or have heretofore used and exercised all or any of the said rights or privileges or as he or his customary heirs could or might have used and exercised the same if the aforesaid messuages lands hereditaments and premises had not been enfranchised *And* the said A. Z. for himself his heirs executors and administrators doth hereby covenant with the said C. D. his heirs and assigns by these

(a) The regrant of common should be omitted where there are no commonable rights. See *ante*, p. 955, pl. 2.

presents in manner following (that is to say) That [for and notwithstanding any act deed matter or thing whatsoever by the said A. Z. or any of his ancestors at any time heretofore made done committed executed or wittingly suffered to the contrary] he the said A. Z. now at the time of the sealing and delivery of these presents is lawfully and rightfully seised of the aforesaid manor of for an estate of inheritance in fee simple in possession and hath in himself good right full power and absolute authority to grant release and enfranchise all and singular the said messuages lands hereditaments and premises hereinbefore granted released and enfranchised or intended so to be with their appurtenances in manner aforesaid and according to the true intent and meaning of these presents *And moreover* that it shall and may be lawful for the said C. D. his heirs and assigns from time to time and at all times for ever hereafter peaceably and quietly to have hold and enjoy the freehold and inheritance of all and singular the said messuages lands hereditaments and premises hereby granted released and enfranchised or intended so to be with their appurtenances for his and their own proper use and benefit without any lawful let suit trouble molestation eviction ejection interruption or disturbance whatsoever of from or by the said A. Z. or his heirs or any person or persons lawfully or equitably and rightfully claiming or to claim by from under or in trust for him or them or any of his ancestors and that free and clear and freed and absolutely acquitted exonerated and discharged or otherwise by the said A. Z. his heirs executors and administrators well and effectually kept harmless and indemnified of from and against all former and other gifts grants bargains sales leases mortgages and all other estates titles troubles charges and incumbrances whatsoever had made done committed executed or wittingly suffered or consented unto by the said A. Z. or any of his ancestors or any person or persons claiming by from through under or in trust for him them or any of them or by or through his their or any of their acts means default privity consent or procurement *And further* that the said A. Z. and his heirs and all and every persons and person whosoever having or lawfully or equitably claiming or to claim any estate right title trust or interest in to or out of the aforesaid manor of by from through under or in trust for him or any of his ancestors shall and will from time to time and at all times hereafter upon the reasonable request and at the proper costs and charges of the said C. D. his

No.
CCCCXVIII.
*By Lord seised
in Fee.*

Further assurance.

No.
CCCCXVIII.
*By Lord seised
in Fee.*

Covenant to
produce
deeds(a).

heirs or assigns make do and execute or cause and procure to be made done and executed all and every such further and other acts deeds conveyances and assurances in the law whatsoever for the further better and more perfectly and absolutely enfranchising all and singular the said messuages lands hereditaments and premises hereinbefore granted released and enfranchised or intended so to be with their appurtenances as by the said C. D. his heirs or assigns or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required and be tendered to be made done and executed *And lastly* that he the said A. Z. his heirs or assigns shall and will from time to time and at all times hereafter upon reasonable notice and at the request costs and charges of the said C. D. his heirs or assigns (unless prevented by fire or other inevitable accident) produce and show forth or cause and procure to be produced and shown forth unto him or them or to his or their counsel attornies solicitors or agents or in any court or courts of law or equity or upon any motion petition examination commission trial or hearing or otherwise as occasion shall require all or any of the deeds evidences and writings specified in the schedule hereunder written for the manifesting evidencing maintaining defending and proving the title estate right interest property and possession of the said C. D. his heirs and assigns in and to the freehold and inheritance of the said messuages lands hereditaments and premises hereby granted released and enfranchised or intended so to be or any of them [*As to copies*, see *ante*, pp. 805, 806] *Provided always* and it is hereby agreed and declared by and between the said A. Z. and the said C. D. that in case the said A. Z. his heirs executors or administrators shall at his or their costs and charges at any time hereafter procure the person or persons for the time being entitled to the custody of the aforesaid deeds evidences and writings to enter into a deed of covenant with the said C. D. his heirs and assigns of the like tenor and import as the covenant lastly hereinbefore contained and shall deliver over the same deed of covenant unto him the said C. D. his heirs or assigns then and in such case the covenant lastly hereinbefore contained shall cease determine and be void to all intents and purposes whatsoever *In witness &c.*

The schedule above referred to.

(a) It is advisable in many cases to have a separate deed of covenant for the production of title deeds, see *ante*, p. 804.

No. CCCCXIX.

Deed of Enfranchisement by Trustees under a Power in a Marriage Settlement, the Tenant for Life joining.

No.
CCCCXIX.
*By Trustees
and Tenant for
Life.*

This Indenture made the *day of &c. Between*
A. B. of &c. and C. D. of &c. *(the trustees for sale and enfranchisement)* of the first part E. F. of &c. *(the tenant for life in possession)* and G. his wife of the second part and H. H. of &c. *(the copyholder)* of the third part *Whereas* by virtue of indentures of lease and release bearing date &c. and made between the said E. F. of the first part the said G. F. now the wife of the said E. F. (by her then name and description of G. G. of &c. spinster) of the second part the said A. B. and C. D. of the third part and I. K. and L. M. *(trustees of a term of years for securing portions, &c.)* of the fourth part (being the settlement made previous to and in contemplation of the marriage then intended and which was soon afterwards duly had and solemnized between the said E. F. and G. F. his wife) the manor of in the county of with its rights members and appurtenances was (together with other manors and hereditaments) limited settled and assured (from and after the solemnization of the said marriage) to the use of the said E. F. and his assigns for the term of his natural life without impeachment of waste with remainder to the use and intent to secure to the said G. F. and her assigns for her life the jointure rent-charge therein mentioned and subject thereto to the several uses intents and purposes and subject to the several powers provisoes limitations declarations and agreements in the said indenture of release limited declared expressed and contained of and concerning the same hereditaments and with the ultimate limitation or reversion to the use of the right heirs of the said E. F. for ever *And* by the said indenture it was agreed and declared That it should be lawful for the said A. B. and C. D. and the survivor of them or his heirs at any time or times thereafter during the life of the said E. F. with the consent and approbation of the said E. F. and G. his wife or of the said E. F. alone if he survived his said wife (to be testified by some writing under their or his hands and seals or hand and seal and to be attested by two or more credible witnesses) to enfranchise and for that purpose to grant bargain sell release and confirm all or any of the messuages &c. holden by copy of court roll of

Recital of settlement.

No.
CCCCXIX.

*By Trustees
and Tenant for
Life.*

all or any of the manors mentioned or intended to be thereby granted and released for such price or prices in money as should be thought reasonable [*Power for trustees to give receipts Declaration that when any lands should be enfranchised the freehold therein should be discharged from the trusts of the settlement and enure to the only use of the person or persons to whom such enfranchisement should be made and of his heirs and assigns for ever*] And it was thereby further agreed and declared That upon every such enfranchisement as aforesaid it should be lawful [*Power for A. B. and C. D. to regrant rights of common*] And whereas at a court holden for the manor of aforesaid on

Admission of
tenant.

the day of all and singular the lands and hereditaments hereinafter described with their appurtenances were surrendered into the hands of the lord of the same manor according to the custom thereof to the use of the said H. H. his heirs and assigns for ever and at the same court the said H. H. was duly admitted tenant of the same customary or copyhold hereditaments to hold to him the said H. H. and his heirs by copy of court roll at the will of the lord according to the custom of the said manor of

Contract to en-
franchise.

And whereas the said A. B. and C. D. with the consent and approbation of the said E. F. and G. his wife testified as hereinafter mentioned did lately contract and agree with the said H. H. for the enfranchisement of the said customary or copyhold lands and hereditaments hereinafter described at or for the price or sum of £

Testatum.

Now this Indenture witnesseth That in pursuance and performance of the said recited contract and in consideration of the sum of £ of lawful money &c. to the said A. B. and C. D. in hand paid by the said H. H. at or before the sealing and delivery of these presents the receipt whereof the said A. B. and C. D. do hereby respectively acknowledge and from the same and every part thereof do acquit release and discharge the said H. H. his heirs executors administrators and assigns and every of them for ever by these presents they the said A. B. and C. D. by virtue and in exercise of the said power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement and by and with the consent and approbation of the said E. F. and G. his wife (testified by this deed or instrument in writing signed sealed and delivered by them in the presence of and attested by the two credible persons whose names are hereon indorsed as witnesses to the signing sealing and delivery hereof by them the said E. F. and G. his wife) and in execution of all and every other powers and authorities power and authority to

Trustees and
tenant for life
convey.

the said A. B. and C. D. belonging or in anywise enabling them hereunto do and each of them doth by these presents enfranchise limit and appoint *And* the said E. F. according to the estate and interest of him the said E. F. doth by these presents grant release enfranchise and confirm unto the said H. H. his heirs and assigns *All &c.* [*parcels*] together with all ways &c. and the freehold and inheritance of the same premises and the reversion &c. and all the estate &c. of the said E. F. in to or out of the same premises and every part thereof *To have and to hold* the said lands hereditaments and all other the premises hereby enfranchised limited and appointed granted released or otherwise assured or intended so to be with their appurtenances unto and to the use of the said H. H. his heirs and assigns for ever freed and absolutely acquitted exonerated and discharged henceforth and for ever hereafter [see *ante*, p. 957] *And this Indenture further witnesseth* That for the consideration aforesaid and in order to preserve to the said H. H. his heirs and assigns all such right of common in and over the wastes of the manor of aforesaid as he the said H. H. or any of his ancestors or predecessors hath or have heretofore used and enjoyed as belonging or appurtenant to the lands and hereditaments hereinbefore described notwithstanding the enfranchisement of the same respective hereditaments they the said A. B. and C. D. by force and virtue and in exercise of the power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement and of all and every other powers and authorities power and authority enabling them hereunto and with the like consent and approbation of the said E. F. and G. his wife (testified as aforesaid) *And also* the said E. F. according to his estate and interest *Do* and every of them *Doth* by these presents grant limit appoint and confirm unto the said H. H. his heirs and assigns for ever all such commonage and right or title to common &c. *ante*, p. 958 [*Covenant by A. B. and C. D. against incumbrances, ante*, p. 452] whereby or by means whereof they the said A. B. and C. D. can or may be prevented from exercising the said recited power of enfranchisement mentioned and contained in the said indenture of release and settlement of the day of in the manner aforesaid and according to the true intent and meaning of these presents *And* the said E. F. for himself his heirs executors and administrators doth covenant with the said H. H. his heirs and assigns by these presents in manner following (that is to

No.
CCCCXIX.
*By Trustees
and Tenant for
Life.*

Habendum.

Regrant of
right of com-
mon.

No.
CCCCXIX.
*By Trustees
and Tenant for
Life.*

say) That it shall and may be lawful to and for the said H. H. his heirs and assigns from time to time and at all times for ever hereafter peaceably and quietly to have hold and enjoy the freehold and inheritance of all and singular the said lands hereditaments and premises hereby enfranchised limited and appointed granted released or otherwise assured or intended so to be with their appurtenances [see *ante*, p. 959, *freedom from incumbrances and further assurance, and to produce deeds, ante*, pp. 959, 960]. *In witness &c.*

—◆—
No. CCCCXX.

No.
CCCCXX.
*Enfranchisement of
Copyhold.*

*An Enfranchisement of Copyhold Premises by way of Grant
(Concise Form).*

Recital of
seisin by lord
of the manor
and copy-
holder.

Contract for
enfranchise-
ment.

Testatum.

Habendum.

This Indenture made &c. Between (Lord) of &c. lord of the manor of in the county of of the one part and (Copyholder) of &c. one of the copyhold or customary tenants of the said manor of the other part Whereas the said (L.) is seised to him and his heirs of an estate of inheritance in fee simple of and in the manor aforesaid And the said (C.) is seised to him and his heirs according to the custom of the said manor of of and in the messuage piece of land and hereditaments hereinafter particularly mentioned and intended to be hereby granted And whereas the said (L.) hath agreed with the said (C.) for the consideration hereinafter mentioned to enfranchise the same messuage and hereditaments Now this Indenture witnesseth That in consideration of the sum of £ of &c. the receipt &c. He the said (L.) Doth hereby grant enfranchise and convey unto the said (C.) All that the said messuage &c. together with all ways waters watercourses timber and other trees mines minerals quarries &c. and all rents fines heriots suits and services due or payable in respect of the same premises or any of them and all the estate right title interest property claim or demand of him the said (L.) of in or to the said messuage piece of land and hereditaments To have and to hold the said messuage lands and hereditaments hereby granted and enfranchised or intended so to be unto the said (C.) his heirs and assigns To the use of the said (C.) his heirs and assigns for ever freed and discharged from the copyhold tenure thereof and from all rents fines heriots fealty suit of court and all other usual or customary or copyhold payments duties services or customs whatsoever to

be paid done or performed for in respect of the same messuage &c. or any of them or any part thereof as copyhold holden of or as parcel of the said manor (a). *And this Indenture further witnesseth* That for the considerations aforesaid and in performance of the said agreement he the said (L.) doth hereby grant and confirm unto him the said (C.) and his heirs *All* such commonage and right and title of common of every nature and kind whatsoever of in upon or over all and every the wastes commons and commonable lands of the said manor as the said (C.) or any person or persons through whom he claims held possessed or enjoyed in respect of and as appurtenant to the premises hereby enfranchised or intended so to be and the freehold and inheritance of all such commonable rights as aforesaid in the same or the like manner as the said (C.) or his customary heirs could have used or exercised the same if the said messuages lands hereditaments and premises had not been enfranchised And the said (L.) for himself &c. [*Covenants for title see ante*, pp. 958, 959].

No.
CCCCXX.
*Enfranchise-
ment of
Copyhold.*

Further tes-
tatum.

Grant and
confirmation of
commonage to
copyholder.

EXCHANGES.

- | | |
|--|------------------------------------|
| 1. <i>Definition.</i>
<i>The word "Exchange" necessary.</i> | 4. <i>Mutual Conveyances.</i> |
| 2. <i>Parties to an Exchange.</i> | 5. <i>Tithe Commissioners.</i> |
| 3. <i>Condition, &c.</i> | 6. <i>Inclosure Commissioners.</i> |
| | 7. <i>Stamp Duty.</i> |

SECT. 1. A deed of exchange is the mutual grant of equal interests, Definition.
Shep. Touch. 289. It is not necessary that the estates exchanged should be of equal value, but they should be equal in quality or tenure, as fee-simple for fee-simple, term of years for term of years, &c., Co. Litt. 50, 51. The word "exchange" is so individually requisite and appropriated by law in this case, that it cannot be supplied by any other word, *Ib*.

The word
"exchange"
necessary.

2. Whatever may be the number of persons named in the introductory part of the deed, an exchange can properly be between two distinct contracting parties only, for want of the mutuality and reciprocity on which its operation so chiefly depends, Shep. Touch. Prest. ed. 295, *Case of Eton College*, 3 Wils. 483.

Parties to an
exchange.

(a) See clause, *ante*, p. 957.

Exchanges.

Conditions and warranty in an exchange.

3. If the exchange were of lands or tenements of any estate of inheritance or freehold, a condition and a warranty was *tacitè* implied in the word "exchange;" a condition to give re-entry upon the lands given in exchange, in case of eviction from all or part of the other lands, and a warranty to enable the party evicted to vouch and recover over in value so much of his own land as is equal to what has been recovered from him, 4 Co. 121; Shep. Touch. 290; but now, by the 8 & 9 Vict. c. 106, s. 3, all exchanges of any tenements or hereditaments, not being copyhold, made after the 1st October, 1845, must be made by deed; and by sect. 4 of the same Act it is enacted, that an exchange made after the said 1st October, 1845, shall not imply any condition in law.

Mutual conveyances.

4. Although by the omission of the word "exchange" the deed cannot operate as an exchange, yet it may take effect to other purposes; as if one by deed doth give an acre to another, and that other doth give his acre to him without any word of exchange, in this case, although the acres will not pass by way of exchange, yet they will pass by way of grant. Such deeds of mutual conveyance are more frequent in modern practice than deeds of exchange, Shep. Touch. 297. An exchange is sometimes effected by one deed comprising reciprocal conveyances from each party to the other of the lands respectively given and taken in exchange, and sometimes by two separate and distinct deeds. A covenant for quiet enjoyment may be added, but the deed is good enough without such covenant, Shep. Prec. 55.

Tithe Commissioners.

5. The Tithe Commissioners had powers to exchange glebe lands for other land within the same or any adjoining parish, or otherwise conveniently situated, with the consent of the ordinary and patron of the benefice, and of the landowners in possession of the land to be given in exchange, 5 & 6 Vict. c. 54, s. 5. These powers were afterwards extended to cases whether the commutation of the tithes of the parish had or had not been completed, 9 & 10 Vict. c. 73, s. 22.

Inclosure Commissioners.

6. Many exchanges have been effected by the Inclosure Commissioners by a simple and inexpensive mode under the Acts for the inclosure, exchange and improvement of lands. See 8 & 9 Vict. c. 118, ss. 16—21, 147, 151; 9 & 10 Vict. c. 70, ss. 9, 10, 11; 10 & 11 Vict. c. 111, ss. 4, 6; 12 & 13 Vict. c. 83, ss. 7, 11; 15 & 16 Vict. c. 79, ss. 17, 21, 29, 31, 32; 17 & 18 Vict. c. 97, ss. 1—5; 20 & 21 Vict. c. 31. See Cooke on Inclosures, p. 101—126, 3rd ed. The powers of the above Acts extend to corporeal and incorporeal hereditaments of every tenure, whether belonging to the Crown, or to corporations sole or aggregate, or to charities, or to private individuals, and whether in settlement, mortgage or otherwise. The Acts above referred to do not contain provisions for the payment of money for equality of exchange. Exchanges under the above Acts may be effected without any investigation of titles, as there is a change of

land, but not a change of title, as the title to the lands given in exchange is communicated and attaches to the lands received in exchange, which become subject to the same incidents of tenure (see however 10 & 11 Vict. c. 111, s. 6), uses, estates and incumbrances as existed prior to the exchange, 8 & 9 Vict. c. 118, ss. 93, 94; 17 & 18 Vict. c. 97, s. 8.

7. When any sum not exceeding 300*l.* is paid for equality of exchange, the deed requires a stamp of 1*l.* 15*s.* only; but if above that sum, then the deed is subject to an *ad valorem* stamp, as in other conveyances, and if the deed contains 2160 words or upwards, then a further progressive duty of 10*s.* for every entire quantity of 1080 words above the first 1080. See *ante*, p. 887. Stamp duty.

No agreement or award made, confirmed, or used under the Act 8 & 9 Vict. c. 118, is chargeable with any stamp duty, sect. 163.

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No. CCCCXXI.

Exchange by a Rector of a Parsonage House and Glebe Lands for another House and Lands, to become Glebe.

No.
CCCCXXI.
*Parsonage
House and
Glebe Lands.*

Obs. By the 17 Geo. 3, c. 53, amended by 55 Geo. 3, c. 147; 56 Geo. 3, c. 5; 2 & 3 Geo. 4, c. 72; and 6 Geo. 4, c. 8, parsons, vicars, and incumbents are authorized, with the consent of the bishop, to convey the parsonage or glebe lands and appurtenances in exchange for any other house or lands; and by the last Act, the power of exchange is extended to any number of statute acres, and also to the taking of copyholds in exchange for freeholds, see also 1 & 2 Vict. c. 23. The deed of exchange must be indented and registered in the bishop's court.

This Indenture made the day of between the reverend A. B. clerk rector of in the county of and diocese of of the first part the right reverend the lord bishop of ordinary of the said rectory of the second part C. D. of patron of the said rectory of the third part and E. F. of (*purchaser*) of the fourth part *Whereas* the said A. B. as such rector as aforesaid is seised to him and his successors of and in the parsonage house and glebe lands hereinafter expressed to be conveyed to the said E. F. *And whereas* the said E. F. is seised for an estate of inheritance in fee simple in possession of or to the messuages, piece of land and hereditaments hereinafter expressed to be conveyed to the said A. B. *And whereas* the said A. B. and E. F. have mutually agreed to exchange the said messuages pieces of land and hereditaments hereinafter mentioned

No.
CCCCXXI.

Parsonage
House and
Glebe Lands.

in pursuance of and under the power contained in an act passed in the 55th year of the reign of his late Majesty King George the Third intituled "An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater value or more conveniently situated for their Residence and Occupation and for annexing such Houses and Lands so taken in Exchange to such Benefices as Parsonage or Glebe Houses and Glebe Lands and for purchasing and annexing Lands to become Glebe in certain cases and for other purposes" And of another act of parliament made and passed in the 6th year of the reign of King George the Fourth intituled "An Act to amend and render more effectual an Act passed in the 55th year of his late Majesty King George the Third for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands and for other purposes therein mentioned" *And whereas* three months previous notice of such exchange [*describing the particulars extent and situation of the premises respectively to be given and taken in exchange*] hath been given by the insertion of such notice for three successive weeks on the day of the day of and the day of respectively in the newspaper called the being a weekly newspaper of and in general circulation in the said county of being the county wherein the premises so to be given and taken in exchange are respectively situate *And also* by affixing such notice in writing on a conspicuous part of the parish church of aforesaid in which parish the messuages lands and hereditaments hereinafter particularly mentioned and intended to be hereby exchanged are respectively situate on three Sundays respectively (that is to say) the day of the day of and the day of now last past wherein divine service was performed and shortly before the commencement of such service on each of the said Sundays in such church *And whereas* a map under an actual survey the said parsonage house and glebe lands intended to be given in exchange by the said A. B. *And also* of the messuage piece of land and hereditaments intended to be taken in exchange for the same by the said A. B. together with a valuation of the same premises respectively have been made by a competent surveyor approved by the said patron and ordinary and by the said incumbent of the said rectory and verified on oath by the said on the day of at before esquire one of her Majesty's justices of

the peace for the said county of *And whereas* the said lord bishop of having received the said map and valuation *Did* by an instrument under his hand and episcopal seal dated purporting to be a commission of inquiry and directed to seven persons therein named and such as are for that purpose required in and by the said act of parliament of the 55th year of the reign of King George the Third *Do* authorize and commission them to inspect examine and make inquiry as to the respective premises proposed to be given and received in exchange as aforesaid And after such inspection and examination to certify to the said lord bishop of whether the proposed exchange was in their judgment fit and proper to be made and whether it would promote the permanent advantage or convenience of the said (*rector*) and his successors *And whereas* the said commissioners by an instrument under their hands dated and indorsed on the said commission certified to the said lord bishop of that the said proposed exchange was in their judgment fit and proper and would promote the convenience of the said (*rector*) *Now this Indenture witnesseth* That for effectuating the said exchange and in consideration of the conveyance hereinafter expressed to be made by the said E. F. he the said (*rector*) under and by virtue of the powers and authorities to him given as such rector as aforesaid in and by the said acts of parliament or either of them with the consent of the said lord bishop of as ordinary of the said rectory and of the said (*patron*) as patron of the said rectory signified by their respectively being parties to and signing and sealing these presents in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses to the signing and sealing hereof by the said lord bishop of and the said (*patron*) in manner aforesaid as appears by the attestation hereupon endorsed *Doth* by this deed indented and intended to be registered as aforesaid grant and convey in exchange unto the said (*purchaser*) and his heirs *All &c.* [*parcels*] and all [*General words, see PURCHASE DEEDS*] *To have and to hold* the said hereditaments hereinbefore expressed to be granted and conveyed in exchange unto the said (*purchaser*) and his heirs to the use of the said (*purchaser*) and his heirs In lieu of and in exchange for the hereditaments hereinafter expressed to be granted and conveyed in exchange by the said (*purchaser*) *And this Indenture also witnesseth* That for further effectuating the said exchange and in consideration of the grant and conveyance

No.
CCCCXXI.
*Parsonage
House and
Glebe Lands.*

Conveyance by
rector.

Habendum.

Conveyance to
the rector.

No.
CCCCXXI.
*Parsonage
House and
Glebe Lands.*

hereinbefore contained he the said E. F. upon the acceptance of the said (*rector*) and with the consent of the said (*patron*) and of the said lord bishop of as such patron and ordinary as aforesaid *Doth* grant and convey in exchange unto the said (*rector*) rector of the said rectory of and his successors *All &c. [parcels]* And all [*general words*] *To have and to hold* the said hereditaments and premises lastly hereinbefore granted unto the said (*rector*) as rector of the said rectory of and his successors for ever so that the same hereditaments and premises may for ever hereafter be the glebe land and premises of and annexed to the said rectory of to all intents and purposes whatsoever and be held and enjoyed by the same incumbent and his successors pursuant to the said Acts of 55 George III. and 6 George IV. respectively in exchange for the said glebe land and premises hereinbefore granted and conveyed in exchange by the said (*rector*) or expressed and intended so to be And the said (*rector*) *Doth* hereby &c. [*Covenants by rector that he has done no acts to incumber, and for further assurance see post PURCHASE DEEDS*] And he the said E. F. *Doth* hereby &c. [*Covenants for title by E. F. see post PURCHASE DEEDS*] *In witness &c.*

FEOFFMENTS.

- | | |
|---|---|
| 1. <i>What is a Feoffment.</i>
<i>By what Words made.</i> | 4. <i>Of what things a Feoffment may
be made, or otherwise.</i> |
| 2. <i>Parties to a Feoffment.</i> | 5. <i>Force of a Feoffment.</i> |
| 3. <i>How made.</i>
<i>No Writing formerly necessary.</i>
<i>Livery of Seisin necessary.</i>
<i>Livery of Seisin in Person or by
Attorney.</i> | 6. <i>Clause of Warranty.</i>
7. <i>Definition of Livery of Seisin.</i>
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What is a
feoffment.

SECT. 1. A feoffment is the gift or grant of honours, castles, manors, messuages, lands, houses or other corporeal hereditaments, to another in fee simple. He that so gives or enfeoffs is called the *feoffor*, and the person enfeoffed the *feoffee*, 1 Inst. 9, 271 ; 2 Bl. Com. 310. It is properly a conveyance in fee, and yet it is improperly

called a feoffment when an estate of freehold only doth pass, Co. Litt. 9. The most proper words of making this are "give, grant and enfeoff," Shep. Touch. 203.

2. As a feoffment operates by transmutation of possession, it is necessary that the feoffor should be in possession, and the feoffee out of it, therefore reversioners, remaindermen, or persons possessed of chattel interests only cannot convey their interests by feoffment, because there is no possession in the feoffor, and joint tenants cannot enfeoff each other, because they are both in possession, Perk. s. 191; 1 Inst. 193, 200.

3. This mode of conveyance might formerly have been made by word, without any writing; but it was usually made by writing, and was called a charter of feoffment, Shep. Touch. 203. By the Statute of Frauds, it must now always be in writing. By the Act 8 & 9 Vict. c. 106, s. 3, it is enacted, that "a feoffment made after the 1st Oct. 1845, other than a feoffment made under a custom by an infant, shall be void at law unless evidenced by deed." But the mere signing and sealing a deed of feoffment is not sufficient to pass an estate of freehold, unless it be accompanied with a formal delivery of the possession, called a livery of seisin, to be made by the feoffor to the feoffee, either in person or by attorney, in the presence of witnesses, Co. Litt. 48 a; Shep. Touch. 210; the attorney who is to give or receive seisin must be appointed by deed, Co. Litt. 48 b. When livery of seisin is made in person, a memorandum thereof is indorsed on the deed; but if by attorney, then a power of attorney is likewise inserted for that purpose in the deed, see Form, *post*, p. 974.

4. A feoffment may be made of anything which lies in livery, but not of things of an incorporeal nature, of which no livery can be had, as tithes, advowsons, commons, rents, dignities or the like; so it cannot be made of reversions or remainders, nor of chattel interests, or any other interest, as equitable estates, of which no seisin can be made, 1 Inst. 49.

5. A feoffment is the oldest and most efficacious of all conveyances, and served to clear all disseisins, intrusions, and other wrongful and defeasible estates, Shep. Touch. 204; Watk. Pr. 164; 2 Prest. Abstr. 408. It was formerly used to create an estate of freehold by disseisin, and in conjunction with a fine to gain a title against adverse claimants. The principal point of interest with regard to feoffments was its operation as a tortious conveyance, see 4 Byth. Conv. by Sweet, pp. 43—56. But a feoffment made after the 1st October, 1845, has not any *tortious* operation, 8 & 9 Vict. c. 106, s. 4. A feoffment was formerly one usual mode of conveyance adopted by corporations, but since the stat. 8 & 9 Vict. c. 106, s. 2, a grant by them will be as effectual. By the tenure of gavelkind, infant heirs of the age of fifteen may convey their lands for money or any other

Feoffments.

By what words made.

Parties to a feoffment.

How made.

No writing formerly necessary.

Livery of seisin necessary.

Livery of seisin in person or by attorney.

Of what things a feoffment may be made, or otherwise.

Force of a feoffment.

<i>Feoffments.</i>	valuable consideration, by feoffment only, with livery of seisin, in person and not by attorney, Rob. Gav. 193. Probably a feoffment is now seldom employed as a conveyance, see 4 Byth. Conv. by Sweet, pp. 37—69, except by infants under the custom of gavelkind, see Form 2, Davidson's Conv. p. 182, 2nd ed.
Clause of warranty.	6. A clause of warranty is usually inserted in a feoffment; but covenants for the title are preferred, as a warranty only binds the heirs having assets; but covenants bind executors and administrators as well as heirs, in respect to both real and personal assets. It was, however, sometimes deemed prudent to insert a clause of warranty, in addition to the covenants for title, as it might possibly bind a reversioner or remainderman, where no assets descended, and be even a bar to a latent entail, Shep. Prec. 25; Watk. Prin. 167; Gilb. Ten. 133. But now, by the 3 & 4 Will. 4, c. 27 and c. 74, warranty is abolished, and consequently this clause of warranty is unnecessary.
Definition.	7. Livery of seisin is the delivery of corporeal possession of the land or tenement, Shep. Prec. 25, and is of two kinds, livery in deed, and livery in law. A livery in deed is where the feoffor taketh the ring of the door, or turf of the land, and delivereth the same upon the land to the feoffee in name of seisin of the land. But a livery may be made by words, without any act or ceremony at all, as the feoffor, being at the house door, or within the house, saith, "I deliver you seisin and possession of this house in the name of seisin, and possession of all the lands and tenements contained in this deed." Livery in law is when the feoffor saith to the feoffee, being within view of the house or land, "I give you yonder land to you and your heirs, go enter into the same and take possession thereof accordingly," Co. Litt. 48. Livery of seisin is necessary when any estate of fee-simple or fee-tail is granted by deed of feoffment, or an estate for life by a lease for life, Shep. Prec. 25.
Giving or receiving by attorney.	8. A man may either give or receive livery by his attorney, but such delegation of authority must be by deed, Co. Litt. 48; 3 Bac. Abr. 166. But the livery of seisin made by an attorney must be a livery in deed and not in law; and it must be made in the lifetime of the parties, Co. Litt. 52, <i>b</i> ; Shep. Touch. 218; except in the case of a corporation aggregate, Co. Litt. 52. The power of attorney may be either within the deed itself, whether it be indented or poll, and this also notwithstanding the attorney to be no party to the deed; or the power of attorney may be given by a separate deed, see <i>Power of Attorney</i> , Shep. Touch. 217.
Memorandum of livery.	9. After livery had and taken, either in person or by attorney, a memorandum thereof must be endorsed on the deed.
Stamp duty.	10. An <i>ad valorem</i> stamp, when the feoffment is made for the sale or mortgage of lands, as on a conveyance or mortgage, otherwise a deed stamp of 1 <i>l.</i> 15 <i>s.</i>

No. CCCCXXII.

No.
CCCCXXII.
Deed of.

Deed of Feoffment from Vendor to Purchaser.

This Indenture made &c. Between (vendor) of &c. of the first part and the (purchaser) of the second part A. B. of &c. of the third part and C. D. of &c. of the fourth part Witnesseth that in consideration of the sum of £ to the said (vendor) paid by the said (purchaser) at or before the sealing and delivery of these presents the receipt whereof and that the same is in full for the absolute purchase of the fee simple and inheritance of the piece or parcel of land hereinafter described the said (V.) doth hereby acknowledge and from the same and every part thereof doth hereby acquit release and for ever discharge the said (P.) his heirs and assigns He the said (V.) hath granted enfeoffed and confirmed and by these presents doth grant enfeoff and confirm unto the said (P.) his heirs and assigns All that piece or parcel of land or ground situate &c. containing acres or thereabouts be the same more or less &c. [here set out the boundaries] And all the houses buildings commonable rights hedges ditches fences mounds ways paths waters watercourses liberties privileges easements profits commodities advantages and emoluments whatsoever to the said piece or parcel of land or ground and hereditaments hereby granted enfeoffed and confirmed or intended so to be or any part thereof belonging or anywise appertaining And the reversion and reversions remainder and remainders yearly and other rents issues and profits of the said piece or parcel of land or ground and hereditaments hereby granted and enfeoffed or intended so to be and every part thereof And all the estate right title interest use trust inheritance property possession benefit claim and demand whatsoever both at law and in equity of the said (V.) in to or out of the said piece &c. hereby granted &c. and every part thereof with the appurtenances To have and to hold the said piece or parcel of land hereditaments and all and singular other the premises hereinbefore granted and enfeoffed or intended so to be with the appurtenances unto the said (P.) and his heirs To the only proper use and behoof of the said (P.) his heirs and assigns for ever And the said (V.) doth hereby for himself his heirs and assigns covenant and grant with and to the said (P.) his heirs and assigns that the said (V.) and his

General words.

Habendum.

Clause of warranty.

No.
CCCCXXII.
Deed of.

Power of at-
torney.

To give livery
of seisin,

and to receive
livery of seisin.

heirs will warrant (*a*) to the said (*P.*) his heirs and assigns the piece or parcel of land or ground hereditaments and premises hereby granted and enfeoffed or intended so to be and every part thereof against the said (*V.*) and his heirs and against all other persons whomsoever And (*b*) the said (*V.*) doth by these presents nominate and appoint and in his place and stead put the said A. B. to be his true and lawful attorney for and in the name of the said (*V.*) to enter into and upon and to deliver full and peaceable possession and seisin of the piece or parcel of land or ground hereditaments and premises hereby granted and enfeoffed or intended so to be or of some part thereof in the name of the whole unto the said (*P.*) his heirs and assigns or the said C. D. his attorney in that behalf hereinafter authorized according to the tenor form and effect of these presents And the said (*P.*) doth by these presents nominate and appoint the said C. D. the true and lawful attorney of and for the said (*P.*) and in his name and stead to enter into and upon the said piece or parcel of land and hereditaments or some part thereof in the name of the whole and then to receive and take of and from the said (*V.*) or his attorney full peaceable and quiet possession and seisin of all and singular the said hereditaments or of some part thereof in the name of the whole and such possession and seisin so taken To hold to the said (*P.*) his heirs and assigns according to the form and effect and the true intent and meaning of these presents
In witness &c.

No.
CCCCXXIII.
Livery of Seisin.

No. CCCCXXIII.

Memorandum of Livery of Seisin endorsed on last Feoffment.

Be it remembered that on this day of in the year first within written full and peaceable possession and seisin of the lands and hereditaments within mentioned to be granted and enfeoffed were taken and had by the within named A. B. for and in the name and as the attorney of the within named (*V.*) and by the said A. B. were in the name of the said (*V.*)

(*a*) As to this clause, see Pref. sect. 6.

(*b*) As to this power of attorney, see Pref. sect. 9.

delivered to the within named C. D. for and in the name and as the attorney of the within named (P.) *To hold* the same unto the said (P.) his heirs and assigns for ever according to the form and effect and true intent and meaning of the within written indenture in the presence of &c.

No.
CCCCXXIII.
Livery of Seisin.

FURTHER CHARGES.

No. CCCCXXIV.

Further Charge on Mortgaged Premises.

No.
CCCCXXIV.
*On Mortgaged
Lands.*

Obs. The same *ad valorem* duty as on a mortgage. See *post*,
MORTGAGES.

Stamp.

This Indenture made &c. Between (*mortgagor*) of &c. of the one part and (*mortgagee*) of &c. of the other part *Whereas* &c. [*recite a mortgage for a term of years from mortgagor to mortgagee for securing £ and interest*] *And whereas* the said sum of £ still remains due and owing to the said (*mortgagee*) upon the security of the said premises but all interest for the same hath been paid to the day of the date of these presents *And whereas* the said (*mortgagor*) hath applied to and requested the said (*mortgagee*) to lend and advance him the further sum of £ upon the same security to which the said (*mortgagee*) hath consented and agreed *Now this Indenture witnesseth* That in consideration of the sum of £ sterling to the said (*mortgagor*) paid by the said (*mortgagee*) upon the execution of these presents the receipt of which said sum of £ the said (*mortgagor*) doth hereby acknowledge and from the same sum and every part thereof doth hereby acquit and release the said (*mortgagee*) his heirs executors administrators and assigns and every of them He the said (*mortgagor*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns that all and singular the several closes pieces or parcels of land hereditaments and premises comprised in and granted and demised by the said in part recited indenture of day of 18 or intended so to be with their and

Recitals.

Mortgage still
due, but all
interest paid.

Of further loan.

Testatum.

Further charge.

No.
CCCCXXIV.
*On Mortgaged
Lands.*

Covenant from
mortgagor.

No redemption
until payment
of £ and
£ .

To pay money
now lent.

And for further
assurance in
case of default.

every of their appurtenances shall respectively stand charged with and be a security for payment unto the said (*mortgagee*) his executors administrators and assigns of the said sum of £ now lent and advanced together with lawful interest for the same after the rate of £ per cent. per annum to be computed from the date hereof as also of the said sum of £ and interest so due and owing as aforesaid *And* that the several closes pieces or parcels of land hereditaments and premises shall not be redeemed or redeemable until payment to the said (*mortgagee*) his executors administrators and assigns as well of the said principal sum of £ and interest thereon as of the said principal sum of £ and interest to grow due on the same *And* the said (*mortgagor*) doth also hereby for himself his heirs executors administrators and assigns covenant &c. That he the said (*mortgagor*) his heirs &c. shall and will well &c. [*covenant to pay the sum now lent, see next Precedent*] *And further* that if default shall be made in payment of the said sum of £ and interest or any part thereof at the day and time hereinbefore mentioned and appointed for the payment thereof He the said (*mortgagor*) and his heirs and all other persons claiming any estate or interest in the said premises under or in trust for him or them shall and will at his or their own costs on the request of the said (*mortgagee*) his executors administrators or assigns make do and execute all further acts and deeds for the better securing the repayment to the said (*mortgagee*) his executors administrators and assigns of the said sum of £ and interest and for the better and more effectually charging the said hereditaments and premises with the payment thereof as by the said (*mortgagee*) his executors administrators or assigns or his or their counsel in the law shall be reasonably devised or advised and required *In witness &c.*



No.
CCCCXXV.

No. CCCCCXXV.

By Indorsement. Further Charge on Lands, to be indorsed on a Mortgage Deed.

This Indenture made &c. Between the within named (*mortgagor*) of the one part and the within named (*mortgagee*) of the other part *Whereas* the within named principal sums of £ and £ yet remain due and owing to the said

Recital of former mortgage.

(*mortgagee*) by virtue of the within written indenture and the deed poll indorsed thereupon but all interest for the same sums hath been duly paid to the said (*mortgagee*) up to the day of the date of these presents *And whereas* the said (*mortgagor*) hath applied to the said (*mortgagee*) to advance and lend to him the further sum of £ which the said (*mortgagee*) has agreed to do upon having the payment thereof secured in manner hereinafter mentioned *Now this Indenture witnesseth* That for and in consideration of the sum of £ &c. [see *last Precedent*] He the said (*mortgagor*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns That all and singular the within mentioned messuages farms lands tenements hereditaments and premises shall from henceforth stand charged with and be subject and liable to and shall continue and remain vested in the said (*mortgagee*) his heirs and assigns for securing not only the payment of the within mentioned sums of £ and £ and the interest thereof but also the payment of the said sum of £ and interest for the same at the rate of £ per centum per annum to commence from the day of the date of these presents *And that* the said hereditaments and premises or any part thereof shall not be redeemed or redeemable either at law or in equity until payment to the said (*mortgagee*) his executors administrators or assigns not only of the said principal sums of £ and £ so lent as aforesaid and the growing interest thereof respectively *But also* the said principal sum of £ now advanced and lent and the interest thereof after the rate aforesaid anything in the within written indenture contained to the contrary thereof notwithstanding *And it is* hereby declared and agreed That the power of sale and other powers contained in the within written indenture shall and may be exercised as well for raising and paying the sum of £ intended to be secured by these presents or so much thereof as shall remain unpaid and the interest thereof as the said sums of £ and £ or so much thereof respectively as shall remain unpaid and the interest thereof respectively *And the* said (*mortgagor*) doth hereby further for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns That he the said (*mortgagor*) his heirs executors administrators or assigns some or one of them shall and will well and truly pay or cause to be paid unto the said (*mortgagee*) his executors administrators or assigns

No.
CCCCXXV.
By Indorsement.

Contract for a
further charge.

Covenant to
charge pre-
mises with the
further sum.

Premises not
redeemable
until payment
of full mortgage
money.

Covenant to
pay mortgage.

No.
CCCCXV.
By Indorsement.

For further
assurance.

the said principal sum of £ together with interest for the same after the rate aforesaid on the day of now next ensuing without any deduction or abatement whatsoever (except in respect of the income or property tax) and according to the true intent and meaning of these presents *And also* That all and singular the said hereditaments hereby charged and made chargeable with the payment of the said sum of £ and interest thereof are free and clear from all estates troubles charges liens and incumbrances whatsoever (other than and except as appears by the within written indenture and the said deed poll) *And further* That the said (*mortgagor*) and his heirs and all and every other persons and person claiming or to claim any estate right title trust or interest at law or in equity or otherwise howsoever of in to or out of the said hereditaments hereby charged or made chargeable with the payment of the said sum of £ and the interest thereof or any part of the same shall and will from time to time and at all times upon every reasonable request of the said (*mortgagee*) his heirs executors administrators or assigns but at the costs and charges in all things of the said (*mortgagor*) his heirs executors administrators or assigns until the said hereditaments shall have been sold and conveyed under or by virtue of the power of sale in the within written indenture contained and thenceforth at the costs and charges of the person or persons requiring the same do and execute or cause and procure to be done and executed all and every such further and other lawful and reasonable acts deeds and assurances in the law whatsoever for establishing and confirming these presents and for the further better and more effectually or satisfactorily charging the said principal sum of £ and the interest thereof upon the said hereditaments and premises hereby or intended and expressed to be hereby charged with the same according to the true intent and meaning of these presents as by the said (*mortgagee*) his executors administrators or assigns or his or their counsel in the law shall be devised or advised and required and be tendered to be made done and executed.
In witness &c.

GIFTS.

1. *Definition.**Operative Words.*2. *Gifts of Personality.**Donatio Causâ Mortis.*3. *When void.*

SECT. 1. A gift is, properly, the transferring the property of a thing from one person to another, without a valuable consideration, and is therefore denominated a voluntary conveyance. It is equally said of moveable and immoveable things: a gift of land formerly signified a conveyance or passing an estate in tail only, as a feoffment is a conveyance in fee, Co. Litt. 384. The operative words are *do, dedi, I give, have given*, and livery of seisin is as necessary as in a feoffment, to render it effective, 2 Bl. Comm. 316; Watk. Prin. 173.

Definition.
Operative words.

2. A gift is also used as a mode of transferring personal property, and differs from a grant and other modes of conveyance principally in this that the gift is always gratuitous. A gift of chattels may be made either in writing or by word of mouth, and if accompanied with delivery of possession takes effect; but when there is no delivery of immediate possession, it is then not properly a gift, but a contract; and a man cannot be compelled to perform it, but upon good and sufficient consideration, 2 Bl. Comm. 441. In order to transfer property by gift there must either be a deed or instrument of gift, or there must be actual delivery of the thing to the donee, *Irons v. Smallpiece*, 2 B. & Ald. 551.

Gifts of personality.

A mortgage of a personal chattel may be made without deed, *Flory v. Denny*, 7 Exch. 581; 21 Law J., Exch. 223. But a mere verbal gift of a chattel to a person in whose possession the chattel is, does not pass the property to the intended donee. As where a testator said to his daughter-in-law, who then had the possession of the plate in question, "I will give you all the plate which is mine," *Sharr v. Pilck*, 4 Exch. 478; 19 Law J., Exch. 113; *Smith v. Smith*, 2 Str. 955; see *Lunn v. Thornton*, 1 C. B. 379, 381 n. (d).

The 8 & 9 Vict. c. 155, s. 36, enacts, that every transfer (of Bristol and Exeter railway mortgages) shall be by deed, duly stamped, &c. A. having in his lifetime given by word of mouth and delivery to B. two such mortgages or debentures; it was held, that assuming the property in the mortgage debts did not pass by such gift, nevertheless that A.'s executor could not maintain detinue for the documents against B., *Barton v. Gainer*, 3 H. & N. 387; 4 Jur., N. S. 715.

A. made a voluntary assignment of turnpike bonds and shares in companies to B., in trust for himself for life, and after his death for his nephew. He delivered the bonds and shares to B., but did

Gifts.

not observe the formalities required by the Turnpike Act and the deeds by which the companies were formed, to make the assignment effectual. It was held, in his death that no interest in either the bonds or the shares passed by the assignment, and that B. ought to deliver them to the executor of A., *Searle v. Law*, 15 Sim. 95; see *Doe d. Jones v. Jones*, 5 Exch. 16; *Scales v. Maude*, 6 De G., M. & G. 43; 1 Jur. N. S. 1147; 25 Law J., Ch. 433.

Donatio causâ mortis.

There is another species of gift, namely, a *donatio causâ mortis*, which is a substitute for a will, and consists in a delivery of any chattel when the donor is on the point of death; the gift to take effect only in case he should die. A bond might be disposed of in this manner, and the same has been decided as to bank notes, because the property is transferred by delivery, *Gardner v. Parker*, 3 Madd. 184; but not a check on a banker (*Tate v. Hilbert*, 2 Ves. jun. 120), unless drawn in a special manner, 1 P. Wms. 441; 2 Ves. jun. 121; so not money in the funds, *Ward v. Turner*, 2 Ves. 431; see Wms. on Exors. B. II. Ch. 2, s. 4.

When void.

3. A gift is at this day a suspicious species of conveyance, as being without what the law denominates either a good or valuable consideration; by the 3 Hen. 4, c. 4, and 13 Eliz. c. 5, it is void as to those who were creditors of the donor at the time of its being made, but valid as to subsequent creditors.



No.
CCCCXXVI.
Personalty.

No. CCCCXXVI.

Deed of Gift of Personal Property.

Obs. This requires delivery of possession in the same manner as in a bargain and sale of goods.

Habendum.

Know all Men by these Presents That I A. B. of &c. in consideration of the natural love and affection which I have and bear unto my beloved brother C. B. and also for divers good causes and considerations me the said A. B. hereunto moving do by these presents give and grant unto the said C. B. all and singular my goods chattels and effects &c. *To have hold* receive take and enjoy all and singular the said goods chattels and effects hereby granted unto the said C. B. his executors administrators and assigns to the only proper use and benefit of the said A. B. his executors administrators and assigns for ever *And* I the said A. B. all and singular the said goods chattels personal estate and effects to the said C. B. his executors administrators and assigns against me the said A. B. my executors

Clause of warranty.

and administrators and all and every other person or persons shall and will warrant and for ever defend *In witness &c.*

No.
CCCCXXVI.
Personalty.

See BILLS OF SALE, *ante*, pp. 477, 478.

GRANTS.

1. *Definition.*
2. *Operative Word.*

3. *Attornment.*
4. *Stamp Duty.*

SECT. 1. A grant is, in the common law, a conveyance in writing of incorporeal hereditaments not lying in livery, and which cannot pass without a deed, as annuities, advowsons, commons, rents, reversions, &c., Co. Litt. 172; these, therefore, pass by delivery of the deed. By the Act 8 & 9 Vict. c. 106, s. 2, it was enacted, "that after the 1st October, 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery." Since the passing of this act, the conveyance by grant has nearly superseded conveyances by lease and release and by feoffment.

2. A deed of grant differs but little from a feoffment, except in its subject-matter, for the operative word used therein is "grant;" other words are used, but they are at least superfluous. The words "bargain and sell" will have no operation, unless the deed be inrolled. The words "release and confirm" could, before the 4 & 5 Vict. c. 21, have had no operation, unless the releasee and confirmee had had a previous estate on which they could have operated.

3. Formerly the attornment of the tenant was necessary in some grants and conveyances, but by the 4 & 5 Anne, c. 16, such grants and conveyances are rendered effectual without attornment. See ATTORNMENT, *ante*, pp. 431, 432.

4. By the 13 & 14 Vict. c. 97, a grant on the sale of any estate requires an *ad valorem* stamp. See *ante*, p. 879.

No. CCCCXXVII.

Grant of an Advowson.

No.
CCCCXXVII.
Advowson.

Obs. An advowson is an incorporeal hereditament, Co. Litt. 17 a; and, therefore, if it be in gross, it passes only by grant by deed, and not by livery, Co. Litt. 332 a—338 b; but if the advowson be appendant, by the grant of the manor to which it is appendant the advowson passes, *Long's and Heming's case*, 1 Leon. 208. He who has an

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CCCCXXVII.
Advowson.

advowson in fee may alien the same in fee, for life, or years; or may grant the next presentation, or any number of future presentations, *Elvis v. Archbishop of York*, Hob. 322; but a grant cannot be made by a subject, after the church has become void, *Gibs. 758*; *Stephens v. Wall*, Dy. 283 a; *Wolferstan v. Bishop of Lincoln*, 2 Wils. 197; and if an advowson be sold while the church is void, the next presentation does not pass, *Leak v. Bishop of Coventry*, Cro. Eliz. 811; although the grant of the advowson itself is valid, *Greenwood v. Bishop of Lincoln*, 1 Marsh. 292. If the next avoidance only be sold after the death of the incumbent, the sale is altogether void, *Fox v. Bishop of Chester*, 6 Bing. 1; 1 Dow & C. 416; 3 Bligh, N. S. 123; 2 B. & C. 635. An advowson may be aliened by way of mortgage, but if the church becomes vacant before the mortgage is redeemed, or a bill of foreclosure is obtained, the mortgagee cannot present, *Amhurst v. Dawling*, 2 Vern. 401; *Ivory v. Cox*, Prec. Chan. 71. The rule that the grantor of an advowson may covenant to present such person as the grantee shall nominate, *Plowd. 529*; *Wats. 85*, does not, as it seems, apply to a mortgage, *Mackenzie v. Robinson*, 3 Atk. 559. The case of *Wood v. Marjoribanks*, 4 Jur. N. S. 827, suggests the propriety of inquiring whether the incumbent has charged the benefice with money payable to Queen Anne's Bounty. As to bonds of resignation, see *ante*, BONDS, p. 556.

Know all Men by these Presents That I A. B. of &c. Esquire patron of the rectory or parish church of &c. in the diocese of _____ for divers good causes and considerations me hereunto moving *Do* by these presents grant unto C. D. of &c. his heirs and assigns *All that* the patronage advowson donation nomination presentation and right of patronage of and to the parsonage rectory and parish church of &c. aforesaid with full power hereunto and for the said C. D. his heirs and assigns to present a fit person to the said rectory or parish church whensoever the same shall first and next happen to become void by the death resignation or deprivation of (*incumbent*) the present incumbent thereof or otherwise howsoever And to do and perform all and every act and thing acts and things whatsoever in order to the same in as full large and ample manner to all intents and purposes as I the said A. B. or my heirs may might or hereafter could have done if this present grant had not been made freed and discharged or otherwise by me the said A. B. and my heirs well and sufficiently saved kept harmless and indemnified of and from all and all manner of former or other gifts grants or incumbrances whatsoever whereby to defeat or make void the present grant had made done or suffered by me the said A. B. my heirs or assigns

or by any other person or persons whomsoever lawfully claiming
by from or under me or any of them *In witness &c.*

No.
CCCCXXVII.
Advowson.

No. CCCCXXVIII.

Grant of an Advowson in Fee.

No.
CCCCXXVIII
Advowson.

This Indenture made &c. Between (*Vendor*) of the one part
and (*Purchaser*) of the other part *Whereas* the said (*V.*) has
contracted with the said (*P.*) for the absolute sale to him of the
advowson of the rectory of in the county of and
the inheritance thereof in fee simple free from incumbrances at
or for the price or sum of £ *Now this Indenture wit-*

Recital of con-
tract for sale.

nesseth That in pursuance of the said recited contract and in
consideration of the sum of £ of lawful money of Great
Britain to the said (*V.*) in hand paid by the said (*P.*) at or
before the sealing and delivering of these presents the receipt of
which said sum of £ the said (*V.*) doth hereby acknow-

Testatum.

ledge and from the same and every part thereof doth acquit
release and discharge the said (*P.*) his heirs executors adminis-
trators and assigns and every of them for ever by these presents
the said (*V.*) doth by these presents grant and confirm unto the
said (*P.*) his heirs and assigns all that the advowson donation
right of patronage and presentation of in and to the rectory and
parish church of in the county of with all and

Grant of ad-
vowson.

singular the rights members and appurtenances thereto belonging
or in anywise appertaining and the reversion and reversions
remainder and remainders thereof and all the estate right title
interest trust property claim and demand whatsoever at law and
in equity of the said (*V.*) in to and out of the same advowson
and every part thereof *To have and to hold* the said advowson

Habendum.

and premises hereby granted or intended so to be with the
appurtenances unto and to the use of the said (*P.*) his heirs
and assigns for ever And the said (*V.*) doth hereby for himself
his heirs executors and administrators covenant with the said
(*P.*) his heirs and assigns in manner following (that is to say)
That notwithstanding any act deed matter or thing by him the
said (*V.*) at any time heretofore made done executed permitted
or willingly or knowingly suffered to the contrary he the said
(*V.*) now is lawfully rightfully and absolutely seised of the said
advowson and premises expressed to be hereby granted with

Covenants for
title.

No.
CCCCXXVIII
Advowson.

the appurtenances of a good sure perfect lawful absolute and indefeasible estate of inheritance in fee simple without any manner of condition contingent proviso trust power of revocation or limitation of any new or other use or uses or any other restraint cause matter or thing to alter change charge revoke make void alter or determine the same estate and that notwithstanding any such act matter or thing as aforesaid he the said (V.) now hath in himself good right full power and lawful and absolute authority to grant the said advowson and premises unto the said (P.) his heirs and assigns in manner aforesaid and according to the true intent and meaning of these presents *And also* that it shall be lawful for the said (P.) his heirs and assigns from time to time and at all times hereafter whenever the said church of shall or may by the death resignation deprivation cession or change of the rector or incumbent thereof for the time being or otherwise happen to become vacant to present some proper and qualified clerk to succeed to the said church as the rector or parson thereof and to do all other acts which appertain to the office of patron of the said rectory or church without any let suit molestation hindrance interruption or disturbance of from or by the said (V.) or his heirs or any person or persons claiming or to claim by from through or under him them or any of them *And* that free and clear and freely clearly and absolutely acquitted exonerated and discharged or otherwise by the said (V.) his heirs executors or administrators or some or one of them well and sufficiently saved defended kept harmless and indemnified of from and against all and singular former and other gifts grants bargains sales mortgages charges and incumbrances whatsoever had made done executed committed or suffered by the said (V.) or any person or persons claiming or to claim by from through or under him *And* moreover that the said (V.) and his heirs and every other person having or lawfully or equitably claiming or who shall or may have or lawfully or equitably claim any estate right title or interest in to or out of the said advowson and premises expressed to be hereby granted by from or under him or them shall and will from time to time and at all times hereafter upon every reasonable request and at the proper costs and charges of the said (P.) his heirs or assigns make do acknowledge and execute or cause and procure to be made done acknowledged and executed all such further and other lawful and reasonable acts deeds matters and things conveyances and assurances in law whatso-

Further assur-
ance.

ever for the further better more perfectly and absolutely granting and assuring the same advowson and premises with the appurtenances unto and to the use of the said (*P.*) his heirs and assigns or otherwise as he or they shall direct or appoint as by the said (*P.*) his heirs or assigns or his or their counsel in the law shall be reasonably required and be tendered to be made done and executed *In witness &c.*

No.
CCCCXXVIII
Advowson.

No. CCCCXXIX.

Grant by Patron of a Rectory of the next Presentation.

Obs. 1. A person is disabled from purchasing the next avoidance with the view to his own presentation, 12 Ann. stat. 2, c. 12. It is considered that the purchase of an advowson in fee by a clergyman, and a presentation of himself upon the death of an incumbent, is not within the statute, Fearn's Cases and Opinions, p. 409; see *Barrett v. Glubb*, Bl. Rep. 1055. It has been the practice, in the case of such purchases, to take a conveyance to a trustee, and for the trustee to execute a declaration of trust by a separate deed in favour of the purchaser.

2. This may operate as a bargain and sale without inrolment, as the next presentation is only a chattel interest.

3. As to when the grant of a next presentation, or the contract for such a grant, is void, see *Agreement for the Sale of an Advowson*, ante, p. 170.

This Indenture made &c. Between (*Patron*) of &c. esquire of the one part and (*Grantee*) of &c. of the other part *Whereas* the said (*P.*) intends shortly to leave the kingdom of Great Britain and to go to the island of to take upon him the government of that island which her Majesty has been pleased to confer on him *Now this Indenture witnesseth* That for divers good causes and considerations him the said (*P.*) hereunto moving he the said (*P.*) *Doth* grant bargain and sell unto the said (*G.*) his executors administrators and assigns the next presentation donation collation and free disposition of the rectory of the parish church of aforesaid when the same shall next become void by the death resignation cession or deprivation of the Rev. R. S. clerk the present incumbent or otherwise *To have and to hold* the same unto the said (*G.*) his executors and administrators upon the trust following (that is to say) in case the said (*P.*) shall at the next vacancy or avoidance of the said church be absent from Great Britain then the said (*G.*) his executors or administrators shall and may present such person duly

No.
CCCCXXIX.
*Next
Presentation.*

Grant.

No.
CCCCXXIX.
Next
Presentation.

qualified according to law to the bishop of the diocese or ordinary of the place in order to his being instituted and inducted into the rectory of the said church as he the said (*G.*) his executors or administrators shall think proper *Provided nevertheless* that in case at the next vacancy or avoidance of the said church the said (*P.*) shall be either resident in Great Britain or shall be then dead then and in either of the said cases these presents and every thing herein contained shall cease determine and be absolutely void *In witness &c.*

No.
CCCCXXX.
Next
Presentation.

No. CCCCCXX.

Grant of the next Presentation to a Rectory.

Recital of con-
tract to pur-
chaser.

This Indenture made &c. Between the (*vendor*) clerk of the one part and (*purchaser*) of the other part *Whereas* [*recital of Indenture of grant by which the advowson was conveyed to the vendor the usual uses to bar dower*] *And whereas* the said church is now full by the incumbency of the present and rightful clerk and rector thereof *And whereas* the said (*P.*) hath contracted and agreed with the said (*V.*) for the absolute purchase of the next turn or right of presentation to the said church upon the decease resignation cession or deprivation of the said (*incumbent*) or avoidance of the said church at the price or sum of £

Testatum.

Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the sum of £ of lawful money of Great Britain to the said (*V.*) paid by the said (*P.*) before the execution of these presents the receipt whereof the said (*V.*) doth hereby acknowledge and from the same and every part thereof doth by these presents acquit release and for ever discharge the said (*P.*) his heirs executors administrators and assigns and every of them He the said (*V.*) *Doth* by these presents grant bargain and sell and also by virtue of the said recited power and every other power enabling him in this behalf doth direct limit and appoint unto the said (*P.*) his executors administrators and assigns *All* that the avoidance or right of donation nomination presentation and free disposition of in and to the rectory and parish church of aforesaid whenever the same shall first and next after the date of these presents happen to become void by the death resignation cession or deprivation of the said the present

Grant.

Next presenta-
tion.

incumbent thereof or by any other ways or means whatsoever Together with all houses edifices glebe lands meadows pastures commons rent charges in lieu of tithes fruits oblations pensions portions commodities advantages emoluments profits dues duties services rights members and appurtenances whatsoever to the said rectory and church belonging or in anywise appertaining And all the right title and interest of the said (V.) of in and to the said first and next avoidance presentation and premises hereby granted bargained and sold or intended so to be *To have and to hold* the said avoidance and right of donation nomination presentation and free disposition of and to the said rectory and parish church of aforesaid when the said church shall first and next after the date of these presents happen to become void by any ways or means whatsoever unto the said (P.) his executors administrators and assigns *To* the end and intent that the said (P.) his executors administrators and assigns may have full and sufficient power to present such able and fit person as to him or them shall seem meet to be the clerk or parson of the said rectory and parish church of whenever the same shall so next happen to become void and to cause him to be admitted instituted and inducted in and to the full peaceable possession and enjoyment of the said church and the houses glebe lands rent-charges in lieu of tithes profits benefits and advantages belonging or appertaining to the same and to do fulfil and perform all other matters and things requisite proper or accustomed in that behalf in as full and ample manner and form and to all intents and purposes whatsoever as the said (V.) his heirs executors administrators or any of them could or might do or have done in case these presents had not been executed *And* the said (V.) for himself his heirs executors and administrators *Doth* hereby covenant with the said (P.) his executors administrators and assigns in manner following (that is to say) That notwithstanding any act deed matter or thing whatsoever by the said (V.) or by any person or persons claiming or to claim by from under or in trust for him at any time or times heretofore had made done committed or executed or willingly or knowingly permitted or suffered to the contrary He the said (V.) at the time of the execution of these presents *Hath* in himself good right full power and lawful and absolute authority to grant bargain and sell direct limit and appoint the next presentation turn and avoidance hereby granted bargained and sold or otherwise assured or intended so to be with all the rights

No.
CCCCXXX.
Next
Presentation.

Habendum.

To intent that
purchaser may
present a clerk.

Covenants by
vendor.

Right to
grant.

No.
CCCCXXX.
Next
Presentation.

Quiet enjoy-
ment.

members and appurtenances thereunto belonging unto and to the use of the said (*P.*) his executors administrators and assigns in manner aforesaid and according to the true intent and meaning of these presents *And* that for and notwithstanding any such act deed or thing as aforesaid it shall and may be lawful for the said (*P.*) his executors administrators and assigns to present any fit and able person to be rector of the said rectory and parish church of aforesaid whenever the said church shall next happen to become vacant by or through any of the ways or means aforesaid or otherwise howsoever *And also* That the person who shall be so presented by the said (*P.*) his executors administrators or assigns under or by virtue of these presents shall and lawfully may (if duly qualified) be instituted and inducted into the said rectory and parish church of aforesaid and peaceably and quietly have hold and enjoy the same without any suit trouble denial hindrance molestation interruption and disturbance of from and by the said (*V.*) his heirs executors administrators or assigns or any other person or persons whomsoever lawfully or rightfully claiming or to claim any estate right title or interest in or to the said advowson rectory and premises or any part thereof by from through under or in trust for the said (*V.*) or by through or with his their or any of their acts deeds means consent procurement neglect default or privy or by reason of his acceptance of a bishopric or other preferment which may give a title to or for the benefit of the crown *And further* That the said (*V.*) his heirs executors administrators and assigns and all and every other person and persons whomsoever lawfully and equitably and rightfully claiming or who shall or may at any time or from time to time hereafter lawfully or equitably and rightfully claim by from through under or in trust for him or them any estate right title or interest into and out of the said advowson rectory and parish church of aforesaid shall and will from time to time and at all times hereafter on the request and at the costs and expenses of the said (*P.*) his executors administrators or assigns make do perform acknowledge and execute or cause and procure to be made done acknowledged and executed *All* such further and other acts deeds conveyances and assurances whatsoever for the further better and more perfectly or satisfactorily granting assuring and conforming the said next turn avoidance and presentation of in and to the said rectory and parish church of aforesaid unto the said (*P.*) his executors administrators and assigns according

Further assur-
ance.

to the true intent and meaning of these presents as by the said (P.) his executors administrators or assigns or his or their counsel in the law shall be reasonably devised or advised and required and tendered to be made done and executed *And moreover* That the said (V.) his executors administrators or assigns will from time to time and at any time or times until the right of presentation by virtue of these presents shall have been exercised by the said (P.) his executors administrators or assigns and afterwards during the life of any clerk whom he or they shall so present to the said rectory or church upon every reasonable request in writing and at the costs of the said (P.) his executors administrators or assigns he or they giving unto the said (V.) his heirs or assigns notice in writing of such his or their desire produce and show forth or cause to be produced and shown forth to the said (P.) his executors administrators or assigns or as he or they shall require or at any hearing or examination in any court of law or equity or other judicature in England and not elsewhere as occasion shall be or require the several deeds and writings mentioned in the schedule thereof hereunder written and every or any of them for the manifestation defence and support of the estate right title interest and property of the said (P.) his executors administrators and assigns or any of them in or to the said next presentation and premises hereby granted or intended so to be and will at any time until the right of presentation shall be exercised as aforesaid and afterwards during the life of any clerk to be presented as aforesaid at the costs of the person requiring the same make and furnish to the said (P.) his executors administrators or assigns or to such clerk as aforesaid true copies or extracts attested or unattested of all or any of the same deeds and writings as he or they may require and will in the meantime keep the same deeds and writings safe whole and undefaced unless the said (V.) his heirs executors administrators and assigns shall be prevented from so doing by fire or other inevitable accident *In witness &c.*

The schedule to which the above written indenture refers.

No.
CCCCXXX.
Next
Presentation.

Covenant for
production of
deeds.

No.
CCCCXXXI.
Rent-charge.

No. CCCCXXXI.

Grant of Rent-charge in lieu of Dower.

Recital of
seisin.

Agreement to
grant annuity.

Testatum.

Habendum.

Power of dis-
tress, &c.

Covenant to
pay.
For further
assurance.

This Indenture made &c. Between A. B. nephew and heir at law of H. D. late of &c. deceased of the one part and C. D. of &c. widow and relict of the said H. D. who died intestate on or about the day of of the other part *Whereas* the said H. D. was in his lifetime and during his marriage with the said C. D. seised in fee simple to him and his heirs of and in certain messuages lands tenements and hereditaments situate &c. and having died seised thereof the same descended to the said A. B. his nephew subject to the dower or thirds of the said C. D. into or out of the same *And whereas* it hath been agreed between the said A. B. and C. D. that the said C. D. and her assigns shall during her life in lieu of dower receive an annuity or clear yearly rent-charge or sum of £ as hereinafter is mentioned *Now this Indenture witnesseth* That for the considerations aforesaid He the said A. B. *Doth hereby* give and grant unto the said C. D. and her assigns *One* annuity or clear yearly rent-charge of £ to be issuing out of *all* &c. situate &c. late in the possession of the said H. D. deceased his under-tenants &c. *To have hold* receive perceive and take the said annuity or annual sum of £ unto the said C. D. and her assigns from the day of now last past for and during the natural life of the said C. D. free and clear of and from all taxes and without any deduction whatsoever [except income tax] in lieu of all dower or thirds to which she the said C. D. is can or shall be entitled in or out of all and every the messuages lands and hereditaments of which the said H. D. died seised by two equal half yearly payments (that is to say) £ on &c. and so in proportion to the time the said C. D. shall happen to live after each of the said days of payment before another payment shall become due the first half yearly payment thereof to begin on the day of now next ensuing *And* if it shall so happen &c. [*Powers of Distress and Entry*, see *ante*, ANNUITY, pp. 189, 190] *And* the said A. B. for himself &c. [*Covenant to pay Annuity*, *ante*, p. 189] *And* that he the said A. B. and his heirs and all other persons whomsoever claiming by from through under or in trust for him them or any of them shall and will from time to time and at all times hereafter at the reasonable request of the said C. D. but at the joint and equal

costs and charges of the said A. B. and C. D. their respective heirs executors administrators or assigns during her natural life do and execute all and every such further and other lawful and reasonable acts deeds grants conveyances and assurances in the law whatsoever for the further better more perfectly and absolutely granting assuring and confirming the said annuity &c. of £ to the said C. D. and her assigns during her natural life in lieu of her dower or thirds as aforesaid as she the said C. D. or her assigns or her or their counsel shall lawfully and reasonably advise or require so as for the doing thereof no person be compelled or compellable to go or travel from his her or their usual place of abode And the said C. D. for herself her executors administrators and assigns doth hereby covenant with the said A. B. his heirs and assigns that she the said C. D. and her assigns during her natural life upon due and punctual payment of the said annuity or annual sum of £ without any deduction or abatement whatsoever at the times and in manner aforesaid according to the true intent and meaning of these presents shall and will receive and accept of the same in lieu of all dower or thirds or right or title of dower or thirds at law or in equity which she has or may can or shall have into or out of all or any of the real estates of her said late husband deceased which on his death descended to the said A. B. as aforesaid and which she doth hereby accordingly remise release and for ever quit claim unto him the said A. B. his heirs and assigns *In witness &c.*

No.
CCCCXXXI.
Rent-charge.

Covenant from
grantee to ac-
cept annuity in
lieu of dower.

No. CCCCXXXII.

Grant of a Licence to use a Patent.

Obs. Semble. See *Chanter v. Johnson*, 14 M. & W. 408, that a licence under hand, though a seal was affixed to use a patent, is not a deed, and does not require a stamp. Of course, if the grant be intended not to bear a deed stamp, it will not be executed as a deed, and the omission of the seal will be proper, as avoiding all questions as to whether the instrument were or were not intended to take effect as a deed.

This Indenture made &c. Between (*Patentee*) of &c. of the one part and (*Grantee*) of &c. of the other part *Whereas* his late majesty King by his letters patent under the great seal of the United Kingdom of Great Britain and Ireland bear-

No.
CCCCXXXII.
Licence.

Recital of
letters patent.

No.
CCCCXXXII.
Licence.

Contract for
purchase of
licence.

Testatum.

Habendum.

Covenant from
vendor that he
has not incum-
bered, and will
do no act to
vacate, &c.,
letters-patent.

ing date at Westminster &c. did give and grant unto the said (P.) his executors administrators and assigns his special licence for the sole making using exercising and vending within England and Wales and the town of Berwick upon Tweed his invention of a new floating mill or engine worked by tides and currents of water for grinding all sorts of grain and various other purposes for the term of years from the date of *And whereas* the said (G.) hath contracted and agreed with the said (P.) for the absolute purchase of the benefit of the said letters patent so far as the same relate to or concern the right of making using exercising and vending the said mills in the counties of at or for the price or sum of £ *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (P.) in hand &c. by the said (G.) at &c. the receipt &c. He the said (P.) *Hath* granted bargained and sold and by &c. *Doth* grant &c. unto the said (G.) his executors administrators and assigns that he the said (G.) and the person or persons from time to time to be authorized and licensed by him or them in that behalf shall have the full benefit and the sole and exclusive power and authority of making using exercising and vending the said invention of the said (P.) of a floating mill or engine to be worked by tides or currents of water for grinding all sorts of grain and various other purposes as relates to or concerns all other mills and engines made or intended to be made or constructed upon the principles of the said invention and which henceforth during the residue of the said term of years shall be erected set up or used within any part of the county of *And also* all gains profits and advantages which shall arise from the powers and authorities or interest hereby given and granted to the said (G.) his heirs and assigns (*a*) *To have hold* receive and enjoy the said licences liberties privileges powers authorities interests advantages and all and singular other the premises hereby granted or otherwise assured or intended so to be and every of them unto the said (G.) his executors administrators and assigns henceforth for and during all the residue of the said term of years now to come and unexpired and in as full large and beneficial a manner to all intents and purposes as the said (P.) can or legally may grant the same *And* the said (P.) for himself his heirs executors administrators and assigns doth hereby covenant &c.

(a) The clause of "all the estate," &c. was omitted, as not proper to be inserted here.

That he the said (*P.*) hath not heretofore at any time or times made done executed or willingly suffered and that he will not at any time hereafter make do or willingly suffer any act deed or thing whatsoever whereby or by reason or means whereof the said letters patent are or shall become void or whereby or by reason or means whereof the right of the said (*G.*) his executors administrators or assigns or the person or persons licensed or authorized by him to use exercise and enjoy the said liberties privileges powers and authorities hereby granted to him his executors administrators and assigns shall or may be defeated determined or avoided and that his executors administrators or assigns or either of them shall not nor will during the remainder of the said term of _____ years use or authorize to be used by any person or persons (other than the said (*G.*) his executors administrators and assigns and the person or persons licensed or authorized by him or them) any mills or engines upon the principles of the said invention within the said counties of

And that he the said (*P.*) his executors administrators and assigns shall and will authorize and empower the said (*G.*) his executors administrators and assigns to commence and prosecute any action or actions suit or suits either at law or in equity for any breach or infringement of the privileges granted by the said letters patent as far as relates to any mills to be erected upon the principles of the said invention which shall be used within the said counties of _____ *And also* that he the said (*P.*) his &c. shall and will at any time hereafter at the request and at the costs of the said (*G.*) his executors administrators or assigns do or cause to be done all acts necessary for further better more perfectly and absolutely granting and assuring unto the said (*G.*) his &c. the liberties privileges powers and licences hereby granted as by the said (*G.*) his executors &c. or his or their counsel in the law shall be reasonably advised and required *And* the said (*G.*) doth hereby for himself &c. covenant &c. that he the said (*G.*) his executors administrators and assigns or some or one of them shall and will from time to time and at all times hereafter at his and their own costs and charges well and sufficiently save defend and keep harmless and indemnified the said (*P.*) his executors &c. and his and their lands tenements goods chattels and effects of from and against all losses costs charges damages and expenses which the said (*P.*) his executors administrators or assigns or any of them respectively shall or may bear sustain suffer expend or be put unto by reason of any suit

No.
CCCCXXXII.
Licence.

Authorize purchaser to commence actions, &c.

And will do further acts, &c.

Covenant from purchaser to indemnify vendor against costs of suit.

No.
CCCCXXXII.
Licence.

And will do no
act to defeat
vendor's re-
maining rights.

or suits at law or in equity which shall be brought or prosecuted in his or their name or names respectively under or by virtue of all or any of the authorities hereby given or covenanted to be given *And further* that he the said (*G.*) his executors administrators or assigns shall not nor will at any time hereafter make do commit execute or willingly permit or suffer any act deed matter or thing whatsoever whereby or by reason or means whereof the said letters patent shall become void or whereby or by reason or means whereof the remaining rights and interests of the said (*P.*) his executors administrators and assigns to use exercise and enjoy the said letters patent and the liberties &c. granted by the same shall or may be defeated determined or avoided *In witness &c.*



No.
CCCCXXXIII
Mine.

No. CCCCXXXIII.

Grant of a Tin Mine in Cornwall (a).

Testatum.

Habendum.

This Indenture made &c. Between A. B. of &c. C. D. of &c. F. H. of &c. of the one part and B. C. of &c. of the other part *Witnesseth* That the said A. B. &c. for and in consideration of the payments covenants and agreements hereinafter mentioned and contained on the part and behalf of the said B. C. his executors administrators partners and assigns to be paid fulfilled and performed *Have* granted set and let and by &c. *Do* grant &c. unto the said B. C. full power licence and authority to work dig and search for tin in the whole of all those tin bounds situate &c. *To have hold* and enjoy the said full power licence and authority to work dig and search for tin in the said tin bounds and parts thereof before mentioned according to the custom of the stannaries of Cornwall by and under the usual and customary payment and manner of payment of toll tin and farm dish and tin dues He the said B. C. his executors &c. giving at least twenty four hours' notice to the agents or agent or toller of the said A. B. &c. for taking the toll tin at the wash previous to the carrying of any parcel of tin or tin stuff that may be broken or got out of the said bounds or any of them to the smelting house and permitting and suffering and giving free liberty to the agents or agent or toller for the said tin bounds at all times to go down

(a) See Jones's Attorney's Pocket Book, Coventry's edit.

into any part of the bottoms when and as often as they shall think proper to divide admeasure or inspect all and every the mine or mines within the said tin bounds and the workings therein *Provided also* that if the said A. B. &c. shall at any time after the expiration of five years from the date hereof think fit to take out the farm in the stone Then the said B. C. his executors &c. shall deliver out the one ninth part for farm in the stone after the toll dues shall have been paid off *All* the tin and tin stuff that they shall break and raise within the limits of the said tin bounds hereby sold and granted the agent or toller of the said A. B. &c. giving one month's notice of such their intention of taking out the said farm in the stone *And* the said B. C. for himself his executors administrators partners coadventurers and assigns doth covenant with &c. the said A. B. &c. their executors administrators and assigns in manner following (that is to say) That he the said B. C. his executors &c. some or one of them shall and will erect and build in a good sound and workmanlike manner within some part of the aforesaid tin bounds called N. bounds one steam or fire engine with the necessary pumps and materials for the working thereof of sufficient power and force to draw out and unwater the bottoms of the mine meant and intended to be carried on and adventured in the aforesaid several bounds and that the same steam or fire engine shall be completed and set to work within eighteen months from the date hereof *Provided always* nevertheless and it is the true intent and meaning of these presents and of the parties to the same that if the said B. C. his executors &c. shall neglect or refuse to erect and build as aforesaid the said steam or fire engine with the necessary pumps and materials for working the said mine of sufficient power and force to draw out and unwater the bottoms of the said mine so as aforesaid meant and intended to be carried on and adventured in the aforesaid several tin bounds and premises hereby granted Then and in such case the present grant or set and every article and covenant thereof shall absolutely cease determine and be utterly void to all intents and purposes whatsoever any thing herein contained to the contrary notwithstanding *In witness &c.*

No.
CCCCXXXIII
Mine.

Proviso.

Covenants from
lessee.

To build steam
engine.

Proviso for
making void
the grant.

Memorial Indorsed on the foregoing Grant.

Memorial.—It was agreed by and between the within parties at and before the execution of these presents that instead of the usual and customary payment of toll tin farm dish and tin dues within mentioned He the said B. C. his executors &c. shall pay

No.
CCCCXXXIII
Mine.

and lay out one twentieth part dish or doll for the toll of tin and one eighteenth part dish or doll for farm dues for the first five years after the water of the mine shall be in fork unless the costs of working and carrying on the same shall be fully repaid and refunded to the adventurer before the end of the said five years in which case it is agreed that the usual and customary payment of one fifteenth part for toll and one twelfth for farm dues shall be paid and laid out for the said A. B. &c. *Provided always* that one full fifteenth part being the toll of the leavings of the tin and tin stuff broken in and raised out of the said tin bounds in the duchy manor of S. shall be left for the said A. B. &c. at the stamping mills or smelting house.

No.
CCCCXXXIV
Way.

No. CCCCXXXIV.

Grant of a Way or Road.

1. *Prescription.*
At Common Law.
By Statute.

2. *Where the Right does not exist.*
3. *Who bound to repair Way.*

Prescription.
At common
law.

SECT. 1. A right of way, or of common and other incorporeal hereditaments, may be claimed by prescription, Co. Litt. 113; and formerly, where there was any proof of the commencement or origin of the right within the time of legal memory, that is, since the reign of Richard I., it could not be claimed by prescription; but, for the purpose of quieting possession, courts have presumed a grant after enjoyment for a length of time, *Eldridge v. Knott*, Cowp. 215; *Biddulph v. Ather*, 2 Wils. 23; and, by later decisions, twenty years' uninterrupted enjoyment unexplained and uncontradicted has been held sufficient to raise a presumption of a prior grant, *Bealy v. Shaw*, 6 East, 208; *Moore v. Rawson*, 3 B. & C. 332. Now by 2 & 3 Will. 4, c. 71, s. 1, no claim to a right of common can be defeated after thirty years' uninterrupted enjoyment, by merely showing the time when the right was first enjoyed prior to that period, nor (by s. 2) to a right of way after twenty years' enjoyment, see *Shelford's Real Prop. Stat.* pp. 5—24, 6th ed. A covenant that another shall have and use a way amounts to a grant, *Holmes v. Seller*, 3 Lev. 305. So where a man claims common in gross for a certain number of cattle, or the sole pasture of certain herbage, he may license a stranger to put his cattle in, 1 Edw. 3, 1; 11 Hen. 6, 22; 2 Lev. 327. But no freehold interest (nor it should seem even chattel interest) in such

By statute.

incorporeal hereditaments can be created and passed except by deed, *Herlins v. Shippam*, 5 B. & C. 229; and a licence to a stranger to use a common, being in effect a grant of the common, must be by deed, *Hoskins v. Robins*, 2 Saund. 328, n. 12. Yet a parol licence to stack hay on a close, walk in a park, or enjoy any other privilege on land, is good, and it is not countermandable after it has been acted upon at the expense of the grantee, but only while it remains executory, *Winter v. Brockwell*, 8 East, 310; *Liggins v. Inge*, 7 Bing. 694.

2. No way or other easement can subsist in land of which there is an unity of possession, and will not pass in any grant under the word "appurtenant," unless it be a way of necessity, *Morris v. Eginton*, 3 Taunt. 24; *Barlow v. Rhodes*, 1 Cr. & M. 448. As to rights of way, see Shelford's Real Prop. Stat. pp. 57—59, 6th ed.

3. The grantee of a way, having the use of it, is bound to repair it, *Pomfret v. Ricroft*, 1 Saund. 321; *Taylor v. Whitehead*, Dougl. 745, that is, if the grantee wants the way to be repaired, he must repair himself, *Duncan v. Louch*, 6 Q. B. 909, 910; it is prudent, however, to obviate all questions by inserting a covenant to repair.

This Indenture made between A. B. of &c. of the one part and C. D. of &c. of the other part *Witnesseth* That in consideration of s. by the said C. D. to the said A. B. the said A. B. doth hereby for himself his heirs and assigns covenant and grant with and to the said C. D. his heirs and assigns that it shall be lawful for the said C. D. his heirs and assigns (a) and his and their agents and servants and the tenants and occupiers for the time being of the messuage and farm called in the said parish of and all and every other persons and person for the respective benefit and advantage of the said C. D. his heirs and assigns from time to time and at all times hereafter at his and their respective will and pleasure to go return pass repass either with or without horses cattle carts waggons and other carriages a free and convenient way in through over and along *All that* piece or parcel of land or ground leading from called and lying between of the breadth as the same is more particularly delineated in a plan thereof drawn in the margin of these presents with full and free liberty to make and lay causeways or otherwise to repair and amend the same when and as often as there shall be occasion together with full and free license for the said C. D. his heirs and assigns [*or* "executors adminis-

No.
CCCCXXXIV
Way.

Where the
right does not
exist.

Who bound to
repair way.

(a) If only for a term of years, "for the said C. D. his executors administrators and assigns."

No.
CCCCXXXIV
Way.

trators and assigns"] from time to time and at all times hereafter (a) by all or any of the carriages as aforesaid to lead and carry stone wood timber iron brick tiles gravel or any other thing or things whatsoever in through over the said piece or parcel of land And the said C. D. for himself &c. doth hereby covenant with the said A. B. his heirs and assigns that he the said C. D. his heirs and assigns shall &c. at his and their own proper costs &c. repair amend and keep repaired and amended the said road and way in a substantial and workmanlike manner *In witness &c.*

Grant of a Right of Way to follow the General Words.

And in particular *All* that right of way or passage either on foot or on horseback or either with or without waggons carts or carriages in upon over through or across all that new road which passes over and through certain parts of the closes pieces or parcels of land called as the same way or passage hath been used by the said (*grantor*) for the purpose of more conveniently enjoying the messuage or tenement and premises hereby granted or intended so to be.

INDEMNITIES.

Obs. An indemnity may be given for various purposes and in various ways. Most commonly it is inserted in another deed, in the form of a covenant to indemnify (see *post*, INDEX TO PRECEDENTS). As a separate deed, it may either be by bond, see *ante*, BONDS (*Indemnity*) *ante*, pp. 525, 526, 529, 533, 550—552, 776, 777, or by covenant, with a grant of powers of distress and entry (see *ante*, COVENANTS), or, where it is to indemnify against a rent-charge, it may be by granting a charge on other lands equal in amount to the original charge, so as to exonerate the estate intended to be parted with. This last mode has been adopted in modern practice, and it has been held to be a sufficient security, *Casamajor v. Strode*, 2 Swanst. 347; *S. C.* 1 Jac. 630; but it does not appear to be altogether free from objection, or to afford much, if any, additional security to that which is given by the ordinary powers of distress and

(a) Or "during the continuance of the said term."

entry. Terms of years are often granted for the purpose of indemnifying purchasers and others from incumbrances and other liabilities. As to deeds of indemnity, see 4 Byth. by Sweet, pp. 162—222; 5 Martin's Conv. by Davidson, pp. 501—553.

Indemnities.

No. CCCCXXXV.

No.
CCCCXXXV.

Indemnity against a Rent-Charge by a Grant of Power of Distress.

Distress.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* by indenture bearing even date with these presents and made between &c. *All that* messuage &c. situate &c. being part and parcel of a certain farm lands &c. called &c. were granted to the said C. D. his heirs and assigns for ever *And whereas* the whole of the said farm is subject to and charged with the payment of an annuity or yearly rent-charge called gift payable to the poor of the parish of

Recital of conveyance to purchaser of lands.

Charged with payment of an annuity.

And whereas upon the treaty for the said purchase it was agreed that the annuity should remain charged upon that part of the farm lands and hereditaments belonging to the said A. B. which was not sold to the said C. D. and that the said C. D. his heirs and assigns should have a power of distress and entry upon the same by way of indemnity to him and them against the payment of the said rent-charge *Now this Indenture witnesseth* That in consideration of the premises the said A. B.

Agreement that annuity shall be charged upon other lands.

doth hereby for himself his heirs executors and administrators covenant with the said C. D. his heirs and assigns in manner following (that is to say) That the said annuity or yearly rent-charge of £ shall henceforth be exclusively charged upon and issuing out of the farm and hereditaments mentioned in the schedule hereunder written being such part of the farm lands and hereditaments of the said A. B. as are not comprised in the said in part recited indenture *And further* That if at any time or times hereafter any distress or distresses shall be made or levied in or upon any part or parts of the lands and hereditaments comprised in the said in part recited indenture for recovering the payment of the said annuity or yearly rent-charge of £ or of any part thereof or if any money or costs shall be recovered against the owner or occupier of the same lands and hereditaments on account thereof Then and in every such case

Testatum.

Power of distress, &c.

No.
CCCCXXXV.
Distress.

it shall be lawful for the said C. D. his heirs and assigns or for such owner or occupier as aforesaid from whom such money or costs shall be recovered as aforesaid to enter into and distress upon the hereditaments mentioned in the schedule hereunder written or any part thereof and the distress and distresses then and there made under the authority of these presents to take lead drive carry away and impound and the same to detain and keep and in due time afterwards to sell and dispose of or otherwise to act therein according to law in the same manner as in cases of distresses taken for payment of rent reserved upon leases for years To the intent that by the ways and means aforesaid the said C. D. his heirs and assigns or such owner or occupier as aforesaid from whom any money or costs shall be recovered as aforesaid may be fully paid and satisfied all sum and sums of money costs charges damages and expenses which he or they or any of them may have incurred sustained or been put unto by reason or in consequence of such distress or distresses or any actions suits or other proceedings for recovering payment of the said annuity or yearly rent-charge or otherwise in relation thereto *And also* the costs charges and expenses incident to or attending the said distress or distresses to be made or levied by the said C. D. his heirs or assigns or by such owner or occupier as aforesaid from whom any money or costs shall be recovered as aforesaid *In witness &c.*

The schedule above referred to.

No. CCCCXXXVI.

No.
CCCCXXXVI
Exoneration.

Another, where Estates sold by Public Auction are subject to Two Yearly Rent-Charges (a).

This Indenture made &c. Between A. B. of &c. of the first part (*trustees for sale*) of &c. trustees named in the last will and testament of I. F. late of &c. deceased of the second part C. D. of &c. and E. F. of &c. of the third part and (*trustees*) of &c. named by and on behalf of the said C. D. and E. F. of the fourth part

(a) See *ante*, No. CV., p. 227. An assignment of an annuity for the purpose of exonerating part of the estates charged therewith, and No. CXXXII., p. 288, for the apportionment of rent between purchasers of leaseholds; No. CCCXLV., p. 787, indemnity against the payment of ground rent; No. CCCLXI., p. 817.

Whereas [recite will whereby certain estates were devised to the parties of the second part to sell] And whereas the said (T.) in pursuance of the trusts reposed in them by the said in part recited will have caused the messuages or tenements lands and hereditaments hereinafter described to be put up to sale by public auction pursuant to certain printed particulars and conditions of sale in lots at which sale the said A. B. was declared to be purchaser of Lot 1 being the hereditaments described in the first schedule hereunder written and the said C. D. and E. F. were declared to be purchasers of the remaining lots being the messuages lands and hereditaments described in the second schedule hereunder written And whereas in the aforesaid particulars it is stated that the estates comprised therein were subject to the perpetual payment of £ a year to the curate or vicar of and also of £ to the hospital of which two sums are for the future to be charged upon and paid by the purchaser of the premises comprised in Lot 1 And whereas by indenture bearing even date herewith and made between &c. the messuages &c. therein particularly described and comprised in Lot 1 of the aforesaid particulars and being the hereditaments described in the said first schedule have been conveyed unto and to the use of the said A. B. his heirs and assigns And whereas the said A. B. at the request of the said (T.) hath agreed to exonerate the other estates comprised in Lots from the payment of the said sums of £ and £ in such manner as is hereinafter mentioned Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the premises He the said A. B. doth hereby for himself his heirs and assigns charge and make chargeable the premises comprised in the first schedule hereunder written with the payment of the said annual sums of £ and £ to the intent that the same sums may henceforth and for ever be exclusively charged upon and payable out of the same hereditaments in exoneration of the hereditaments comprised in the said second schedule And for the more completely effectuating the exoneration of the other messuages lands and hereditaments comprised in the said second schedule He the said A. B. doth hereby give grant and confirm unto the said (T.) their heirs and assigns for ever one clear annuity or yearly rent-charge or sum of £ to be yearly issuing and payable out of All the messuages lands and hereditaments described in the said first schedule To have hold receive per-

No.
CCCCXXXVI
Exoneration.

Sale by auction.

Rent-charges.

Conveyance to A. B.

Agreement to exonerate estates.

Testatum.

Charge upon estates of A. B.

Exoneration of other estates.

No.
CCCCXXXVI
Exoneration.

Declaration of
trusts.

ceive and enjoy the said annuity or yearly sum of £ and every part thereof unto the said (T.) their heirs and assigns to be paid and payable at by four equal quarterly payments on the day of &c. between the hours of the first payment to be made on the day of next ensuing *Provided always &c. [powers of distress and entry, see ante, ANNUITY, pp. 189, 190]* And it is hereby declared and agreed by and between the said parties hereto that they the said (T.) shall stand possessed of and interested in the said annuity or yearly sum of £ *Upon trust* in case the said C. D. or E. F. or either of them their or either of their heirs or assigns or any person or persons claiming under or in trust for them or any other person or persons for the time being entitled to or in possession of the premises comprised in the said second schedule or any of them or any part thereof shall at any time hereafter be compelled to pay and satisfy the several annuities or sums of £ and £ hereby exclusively charged upon the premises comprised in the said first schedule or any of them or any part thereof or any arrears thereof or shall incur or sustain any loss costs charges damages or expenses on account or by reason of the nonpayment thereof or on any other account whatsoever relating thereto That then and as often as the same shall happen the said (T.) shall and do from time to time (when lawfully required) by and out of the yearly rent-charge hereby granted by raising and levying the same or any part thereof under the powers herein contained or by such other means as to them shall seem meet (but not until such notice as hereinafter mentioned shall have been given) raise and levy such sum or sums of money as shall be necessary to pay and satisfy all and every the sum or sums of money losses costs charges damages and expenses which the said C. D. or E. F. or either of them their or either of their heirs and assigns or any person or persons for the time being entitled to or in possession of the premises comprised in the said second schedule or any of them shall have been compelled to pay in respect of the said annuities or sums of £ and £ or either of them *And also* all costs charges and expenses which the said (T.) or the survivor of them or the heirs or assigns of such survivor shall have incurred in raising levying and satisfying such sums as aforesaid or otherwise in or about the execution of the said trusts hereby in them reposed And do and shall dispose of the monies so raised and levied so as effectually in all things to indemnify the said C. D. and E. F. and each of them

their and each of their heirs and assigns and all persons claiming under them or otherwise as aforesaid and their respective lands and tenements goods and chattels against the said yearly payments of £ and £ respectively and all arrears and future payments thereof and all contributions claims and demands whatsoever on account thereof *And* it is hereby declared and agreed to be the true intent and meaning of these presents and of the parties hereto that no sum or sums of money shall be raised under the trusts hereinbefore expressed and declared until after the said (T.) or the survivor of them or the heirs or assigns of such survivor or the trustees or trustee for the time being of these presents shall have delivered or left for the said A. B. his heirs or assigns or the person or persons for the time being entitled to the hereditaments described in the said first schedule at his or their usual or last place or places of abode one calendar month's previous notice at least in writing under his or their hand or hands of his or their intention to raise such sum or sums of money and also of the amount intended to be raised *And* it is hereby further declared and agreed That the said (T.) and the survivor of them his heirs and assigns shall permit the person or persons for the time being beneficially entitled to the hereditaments comprised in the said first schedule to retain the rent-charge hereby granted until the trusts hereby declared concerning the same shall arise or require to be performed and also to retain and receive the surplus of the said rent-charge hereby granted which shall remain and not be applied in or towards the execution of the trusts hereby declared *And* the said A. B. doth hereby for himself his heirs executors administrators and assigns covenant with each of the said C. D. and E. F. and each of their heirs and assigns and with each and every of the persons or person for the time being entitled to or in possession of the hereditaments comprised in the said second schedule or any part thereof *That* he the said A. B. his heirs or assigns shall and will at all times well and truly pay the said annuities or sums of £ and £ hereby charged upon the premises comprised in the said first schedule as and when the same shall become due and payable *And* shall and will defend keep harmless and indemnify the said C. D. and E. F. and each of them their and each of their heirs and assigns and all and every persons and person claiming under or in trust for them or entitled or in possession as aforesaid and their respective estates and chattels and especially the said

No.
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Exoneration.

Covenant to
pay annuities.

No.
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Exoneration.

premises comprised in the said second schedule respectively of and from the said sums of £ and £ and all actions suits claims losses distresses entries damages and expenses respectively on account thereof [*Covenants for title by A. B. for right to charge and for further assurance (here add receipts of trustees to be valid discharges, Proviso for appointment of new trustees, Indemnity to trustees)*] *In witness &c.*

The first schedule to which the above written indenture refers.

The second schedule to &c. [*as above*].

No.
CCCCXXXVII.
*Against Fee
Farm Rents.*

No. CCCCCXXXVII.

Deed for indemnifying a Purchaser from Fee Farm Rents and Annual Payments by Grant.

Recital.

Lands subject
to fee farm
rents.

Agreement to
indemnify pur-
chaser.

This Indenture made &c. Between (vendor) of first part (purchaser) of second part and (two trustees) of third part Whereas &c. [recital of agreement for purchase and of conveyance to purchaser in fee] And whereas the said messuage lands hereditaments and premises or some part or parts thereof are (amongst other hereditaments) subject to the payment of a yearly fee farm rent of [here the rents are stated] And whereas upon the contract for the purchase aforesaid the said (vendor) agreed to indemnify the said (purchaser) his heirs and assigns against the said several rents or yearly sums hereinbefore mentioned and all arrears and future payments thereof and all payments costs and damages on account thereof And did propose and agree to convey and assure the several closes or parcels of land and hereditaments hereinafter described and intended to be hereby granted unto and to the use of the said (trustees) their heirs and assigns in trust as hereinafter is mentioned [operative part conveyance by grant of lands to the two trustees Habendum unto and to the use of trustees their heirs and assigns for ever] Nevertheless upon the trusts and for the intents and purposes and under and subject to the powers provisoes declarations and agreements hereinafter declared or expressed of or concerning the same (that is to say) Upon trust for indemnifying as well the said (purchaser) his heirs executors administrators and assigns as also all and singular the said messuages lands hereditaments

Declaration of
trusts.

To indemnify
purchaser
against rents.

and premises so by him purchased as aforesaid of from and against the said fee farm rent of [*the rents are here specified*] and all arrears and future payments of all and every or any of the said rents or yearly sums and also all costs charges damages and expenses which the said (*purchaser*) his heirs executors administrators or assigns every or any of them may at any time hereafter in anywise incur sustain or be put unto by reason or on account of the nonpayment of all or any of the same several rents or yearly sums or of any part or parts thereof respectively or of the respective arrears or future payments thereof or any part thereof *And upon further trust* That they the said (*trustees*) their heirs and assigns shall and do permit and suffer the said (*vendor*) his heirs and assigns to hold and enjoy the said closes or parcels of land hereditaments and premises hereby granted or intended so to be and every part thereof and to receive and take the rents issues and profits thereof for his and their own use and benefit until default shall happen to be made in payment of the said several rents or yearly sums hereinbefore mentioned or some or one of them or some part thereof *And* in case the same rents or yearly sums or any of them or any part thereof shall happen to be in arrear and unpaid by the space of twenty days next after any of the days whereon the said rents or yearly sums respectively ought to be paid and any distress entry or claim shall be made or ejectment delivered or other action or suit or proceeding at law or in equity shall be sued or commenced by the person or persons for the time being entitled to or claiming the said several rents or yearly sums or any of them or any part thereof in respect of the same or the said (*purchaser*) his heirs or assigns shall be in anywise interrupted or prevented in the quiet enjoyment of the said hereditaments and premises so by him purchased as aforesaid or any of them or any part thereof or from receiving the rents and profits thereof or of any part thereof by reason or means of the nonpayment of the said several rents or yearly sums or any of them or any part thereof then and in every such case and so often as the same shall happen *In trust* that they the said (*trustees*) and the survivor of them and the heirs and assigns of such survivor shall and do by and out of the rents issues and profits of the lands hereditaments and premises hereby granted or intended so to be and every or any part thereof or by mortgage or sale thereof or of any part thereof or by bringing actions against the tenants or occupiers of the same

No.
CCCCXXXVII.
*Against Fee
Farm Rents.*

Costs.

To permit
vendor to re-
ceive rents of
lands until de-
fault.

Trusts to raise
money and
costs which
purchaser shall
be compelled
to pay.

No.
CCCCXXXVII.
*Against Fee
Farm Rents.*

premises for the recovery of the rents and profits thereof or by all or any of the said ways or by such other ways and means as to them or any of them shall seem meet levy and raise and pay unto the said (*purchaser*) his heirs executors administrators or assigns all such sum and sums of money as he or they respectively shall have been compelled or may be compellable or which shall be incumbent on him or them respectively to pay for or in respect of the said rents or yearly sums or any of them or the arrears thereof respectively and all costs charges damages and expenses which he the said (*purchaser*) his heirs executors administrators or assigns or any of them shall or may have been put unto or sustained by reason or on account of the nonpayment thereof or by reason or on account of any matter or thing in anywise relating thereto rendering the surplus (if any) of such sum or sums of money so raised after such payment as aforesaid unto the said (*vendor*) his heirs or assigns [*covenant by vendor with purchaser*] his heirs and assigns that he the said (*vendor*) his heirs and assigns or some of them shall and will well and truly pay or cause to be paid all the said fee farm rent of [*the rents stated*] from time to time as the same shall respectively become due and payable and all arrears thereof already incurred and shall and will from time to time and at all times for ever hereafter effectually save defend keep harmless and indemnified the said (*purchaser*) his heirs executors administrators and assigns and his their and every of their lands and tenements goods and chattels from and against the said rents and yearly sums respectively and all costs charges damages and expenses which shall or may be recovered against or be sustained expended or become payable by him them or any of them by reason or means or on account of the nonpayment of all or any of the said rents or yearly sums or any part thereof or the arrears thereof respectively [*absolute covenants for title and further assurance of the lands granted by vendor with trustees*] [*It may be advisable to give the trustees the power of leasing at rack rent with the vendor's consent, subject to the usual restrictions*] *Provided always* and it is hereby agreed and declared by and between the parties to these presents That in case the

Covenant by
vendor to in-
demnify pur-
chaser.

Power to sub-
stitute other
lands as an
indemnity (a).

(a) This power is here added by way of example, but it is to be observed that the same end might be attained by giving a power to the trustees, with the consent of the vendor, to sell or exchange the indemnity lands, and to convey the lands substituted for them upon the same trusts as are herein contained.

said (*vendor*) shall at any time hereafter be desirous to alien and make sale of the said closes or pieces of land hereditaments and premises hereby granted or intended so to be and shall agree to substitute in the place or stead thereof other lands and hereditaments of the like nature to be approved of by the said (*trustees*) or the survivor of them or the heirs or assigns of such survivor or the trustees or trustee for the time being acting in the execution of the trusts of these presents of at least the clear yearly income of £ over and above and free from all charges and incumbrances then and in such case if the said (*vendor*) shall give or cause to be given unto the said (*purchaser*) his heirs or assigns one calendar month's notice in writing of such his desire and shall at the same time together with such notice deliver or cause to be delivered a true and exact rental or particular of the hereditaments which the said (*vendor*) shall be desirous to substitute and shall therewith also deliver or cause to be delivered an abstract of the title deeds evidences and writings manifesting the title of the said (*vendor*) to the absolute inheritance in fee simple in possession of the hereditaments specified in the said particulars and permit such abstract to be compared and examined with such deeds evidences and writings and do make it appear by all reasonable means that the said (*vendor*) is well entitled to and hath full power to convey the same hereditaments for the purposes intended and shall and do by good and sufficient conveyances and assurances in the law at the costs and expense in all things of the said (*vendor*) his heirs executors or administrators effectually convey and assure the hereditaments which shall be specified in the said particular and which shall have been approved of as aforesaid unto and to the use of the said (*trustees*) their heirs and assigns or the trustees or trustee for the time being acting as aforesaid upon the several trusts and to and for the several intents and purposes and subject to and under the several powers provisoes agreements and declarations herein declared or expressed of or concerning the said lands hereditaments and premises hereby granted or intended so to be and to the satisfaction of the said (*purchaser*) his heirs or assigns Then from and immediately after such conveyances and assurances shall have been so made and executed the said (*trustees*) or the survivor of them or the trustees or trustee for the time being of these presents shall and will stand and be seised of the said lands hereditaments and premises hereby granted or intended so to be

No.
CCCCXXXVII.
*Against Fee
Farm Rents.*

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*Against Fee
Farm Rents.*

with the appurtenances *In trust* for the said (*vendor*) his heirs and assigns and to convey the same as he or they shall direct freed and discharged of and from the trusts hereinbefore declared or expressed for the benefit of the said (*purchaser*) his heirs and assigns [*Receipts of trustees to be good discharges Power to appoint new trustees and proviso for trustees' indemnity*] *In witness &c.*



No.
CCCCXXXVIII.
From Portions.

No. CCCCCXXXVIII.

Declaration of Trusts of Bank Annuities invested in the Names of Trustees to indemnify a Purchaser from Portions raiseable for Children.

Recital of
agreement to
invest money
as an in-
demnity.

This Indenture made &c. Between (vendor) of first part (purchaser) of second part and (four trustees) of third part Whereas [recital of settlement of estates to use of vendor for life remainder to trustees for term of years to raise annuity for wife, remainder to trustees for another term to raise portions for children of vendor, recitals of contract for sale and conveyance to the purchaser in fee] And whereas upon the treaty for the said purchase it was stipulated and agreed That the sum of £ part of the said purchase money should be invested in the names of trustees in the public funds or upon real security for the purpose of indemnifying the said (purchaser) his heirs and assigns And also the said manor and hereditaments so conveyed to him as aforesaid from the payment of the portions and maintenance money directed to be raised for the children of the said (vendor) and S. his wife under the trusts of the said term of

Of investment
in consols.

years And whereas the said sum of £ hath been invested in the purchase of the sum of £ Three per cent. Consolidated Bank Annuities pursuant to the said recited agreement for that purpose and the same sum of £ is now standing in the names of the said (T.) in the books of the Governor and Company of the Bank of England as they do hereby respectively admit testified by their executing these presents Now this Indenture witnesseth and it is hereby declared and agreed by and between the parties to these presents and the said (vendor) and (purchaser) do hereby consent and agree That the said (T.) their executors and administrators shall stand and be possessed of the said sum of £ Bank

Trustees to
stand possessed
of bank an-
nuities.

Annuities and the dividends interest and income thereof *Upon trust* for protecting and indemnifying the said (*purchaser*) his heirs executors administrators and assigns *And also* the said manor and hereditaments of and from the payment of all or any part of the portions directed to be raised under the trusts of the said term of years and all maintenance money and interest in respect of the same and all costs charges and expenses which shall or may be raiseable under the trusts of the same term *And* for that purpose upon trust that they the said (*T.*) and the survivors and survivor of them his executors or administrators or the trustee or trustees for the time being of these presents *Do* and shall from time to time by and out of the dividends interest and income of the said Bank Annuities and also by a sale of the whole or a competent part of the said Bank Annuities (if necessary) answer and pay to the child or children of the said (*vendor*) and S. his wife the portion or portions which he she or they respectively shall be entitled to receive under or by virtue of the trusts of the said term of

 years and all maintenance money and interest in respect thereof at the times and in manner by the said hereinbefore recited indenture of settlement appointed for payment of the same *And also* do and shall answer and pay to the said (*purchaser*) his executors administrators or assigns all and every sum and sums of money costs charges and expenses which shall have been paid or incurred by him or them on account or in respect of the same portion or portions respectively or the interest to become due in respect thereof and subject thereto *Do* and shall stand and be possessed of the said sum of £

Bank Annuities and the dividends interest and income thereof *In trust* for the said (*vendor*) his executors administrators and assigns *Provided always* and it is hereby declared and agreed by and between the said parties to these presents That when and as soon as the said (*vendor*) his executors or administrators shall produce to the said (*purchaser*) his heirs or assigns sufficient releases or discharges for such portions as aforesaid and the interest thereof or reasonable evidence that the same never became payable (of which evidence the trustees or the major part of the trustees for the time being shall be judges with full liberty to act in their discretion on the same evidence) *And* shall have answered and paid to the said (*purchaser*) his executors administrators and assigns all and every sum and sums of money which he or they shall be entitled to receive under

No.
CCCCXXXVIII.
From Portions.
To indemnify
purchaser
from portions.

Upon evidence
of payment of
portions, bank
annuities to be
transferred to
vendor.

No.
CCCCXXXVIII.
From Portions.

Dividends
subject to
trusts to be
paid to vendor.

Power for
vendor to ap-
point new
trustees as to
two.

And for pur-
chaser as to
other two.

the trusts hereinbefore declared then the said sum of £ Bank Annuities or so much thereof as shall be then remaining and all dividends interest and income which shall be then due for the same shall be paid transferred or assigned unto the said (*vendor*) his executors and administrators for his and their own use and benefit *Provided always* and it is hereby directed agreed and declared by and between all the said parties hereto That all the dividends interest and income which shall in the meantime and from time to time become due for or in respect of the said sum of £ Bank Annuities or the residue thereof for the time being (other than and except so much of the same dividends interest and income as shall actually and at that time be payable or applicable under the trusts hereinbefore contained) shall be payable and paid to the said (*vendor*) his executors or administrators for his and their own use and benefit *Provided always* and it is hereby declared and agreed That in case any or either of the said (*T.*) or any new trustee or trustees to be appointed under this present provision in their or any or either of their stead shall die or be desirous of being discharged from or shall neglect or refuse or become incapable to act before the said trusts shall be fully performed Then and in that case and as often as the same shall happen it shall be lawful for the said (*vendor*) as to the said (*two of the trustees*) or either of them or the trustees or trustee who from time to time shall be substituted in their or either of their place and for the said (*purchaser*) as to the said (*two other trustees*) or either of them or any trustee or trustees who from time to time shall be substituted in their or either of their place to nominate any person or persons to supply the place &c. [*as in other cases. Provisoes for indemnity and reimbursement of trustees*] *In witness &c.*

LEASES.

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GENERAL.

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Removal of Fixtures.
- V. STAMPS ON LEASES.

Under this head may be considered—1. The Nature of Leases in general; 2. The requisites of a lease; 3. Parts of a Lease; 4. Incidents to a Lease. As to AGREEMENTS for a Lease, see *ante*, pp. 95—99.

1. THE NATURE OF LEASES IN GENERAL.

Definition. SECT. 1. A lease is a contract between lessor and lessee for the possession and profits of lands and tenements on the one hand, and on the other, for a recompense by way of rent or otherwise, *Bac. Abr. Leases* [A].

Underlease. Where a lessee for years disposes of his term, reserving to himself a portion of the term, it is called an underlease; but if it be for the whole of the interest which the lessee has in the premises, it is an assignment. The usual words in a lease are, “grant, demise, and to farm let,” or “demise, lease and to farm let;” but any words showing that the parties intend that the lessee shall occupy the premises are sufficient, and that without any further deed or instrument. But by the 8 & 9 Vict. c. 106, s. 3, a lease required by law to be in writing of any tenements or hereditaments made after the 1st of October, 1845, is void *at law*, unless made by deed.

By 29 Car. II. c. 3, ss. 2, 3, no leases exceeding the term of three years, upon which the rent reserved shall amount to two-thirds of the improved value, shall be granted unless it be by deed or note in writing, signed by the lessor, or his agent authorized by writing. An agreement which is void at law as a lease under the stat. 8 & 9 Vict. c. 106, s. 3, may be specifically performed in equity, *Parker v. Taswell*, 4 Jur., N. S. 1006; 27 Law J., Ch. 812.

II. REQUISITES OF A LEASE.

2. In every lease it is requisite that there should be a lessor able to grant, and a lessee to take, a subject-matter demisable, and the needful ceremonies.

I. *By whom to be made.*

3. All persons being natural-born subjects, and free from the disabilities of infancy, coverture or insanity, may be lessors or lessees.

By persons in general.

It seems that leases made by infants are not absolutely void, but voidable only on their attaining their majority, *Ketsey's case*, Cro. Jac. 320; *Ashfield v. Ashfield*, Sir W. Jones, 157. If the lease is for the benefit of the infant, it binds him, *Ib. Madden v. White*, 2 T. R. 159; 4 Cru. Dig. 74, ss. 66, 67. If it be not for his benefit, although not actually void, it is voidable by him when of age or by his heir if he die under age, *Ib.* s. 67. Confirmation, when the infant is of full age, may be either by deed (*Anon.* 2 Leon. 220) or by parol, 4 Leon. 4 pl. 15. The acceptance of rent by an infant after he attains his majority, clearly amounts to a confirmation of a lease granted by him during his minority, *Ashfield v. Ashfield*, Sir W. Jones, 157; *Story v. Johnson*, 2 Y. & Coll., Exch. 587; Woodfall's L. & T. 23—25, 7th ed.

Infants.

The Court of Chancery may authorize leases to be made of lands belonging to infants when it is for the benefit of the estate, 11 Geo. 4 & 1 Will. 4, c. 65, s. 17; see 19 & 20 Vict. c. 120, s. 36.

A guardian may make leases during the minority of his ward, which binds the infant during his minority, but will not continue beyond the age of majority of the infant without his acquiescence, *Shopland v. Ridler*, Cro. Jac. 55, 98.

A married woman having, generally speaking, no legal existence distinct from her husband, is incapable without his concurrence of making a valid lease at law of lands of which he and she are seised in her right, or of which he is possessed in her right, 1 Platt on Leases, 48.

Married women.

By 3 & 4 Will. 4, c. 76, married women being tenants in fee in tail for life or for years, may make leases by deed for any term consistent with their interests, provided the husband concurs in the deed, and it be produced and acknowledged by the wife on her separate examination in the mode prescribed by that statute, 3 & 4 Will. 4, c. 74, ss. 40, 78, 79 *et seq.*, ante, p. 914.

Where any application or consent shall be made or given by a married woman, under the Settled Estates Act, 19 & 20 Vict. c. 120, she must be examined apart from her husband, either by the court or by a solicitor appointed by the court for that purpose; and it is provided, that no clause restraining anticipation shall prevent the court from exercising the powers of the act, 19 & 20 Vict. c. 120, ss. 37, 38. Whenever a married woman is resident out of the jurisdiction, her examination may be taken by a person appointed by the court, whether he is or is not a solicitor, 21 & 22 Vict. c. 77, s. 6. Subject to such examination as aforesaid, married women may make a consent

Leases.

to any applications whether they be of full age or infants, 19 & 20 Vict. c. 120, s. 39. See *Turner v. Turner*, 4 Jur., N. S. 57, 127; 27 Law J., Ch. 232, 273.

The examination of a married woman under the statute ought not to take place until the petition has been presented and answered and carried into the chambers of the judge by whom it is to be heard, but ought to take place before any judicial step has been taken by him upon it, *In re Foster*, 1 De G. & J. 386; 24 Beav. 220.

Lunatics.

By 16 & 17 Vict. c. 70 (repealing the stat. 11 Geo. 4 & 1 Will. 4, c. 65) ss. 2, 129–134, the committee of a lunatic may make leases, and may surrender and renew leases under the direction of the Lord Chancellor and Lords Justices of the Court of Appeal in Chancery. Where a lunatic is seised or entitled to land in tail, the committee of the estate of the lunatic may, under the direction of the Lord Chancellor, grant leases binding on the lunatic's issue and persons claiming in remainder expectant upon the estate tail, 18 & 19 Vict. c. 13, s. 1. By 15 & 16 Vict. c. 48, s. 6, the Lord Chancellor may, by order upon petition, direct the receiver to make repairs and improvements upon the lunatic's land, or to make allowance to the tenant executing the same, and to execute contracts, leases, or underleases of the same.

Tenant in tail.

4. A tenant in tail may grant a lease by deed *not enrolled* for any term not exceeding twenty-one years, to commence from the date of the lease or from any time not exceeding twelve calendar months from the date of such lease where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack rent, or not less than five-sixth parts of a rack rent, 3 & 4 Will. 4, c. 74, s. 41; see ss. 15, 40.

Tenants for life, &c.

5. Until recently, all persons having only partial interests, as tenants for life, by the curtesy, in dower, by *elegit*, statute merchant, or statute staple, might grant leases during the continuance of their respective estates, but no longer, unless under a power. If tenant for life and he in the remainder join in a lease for years by deed, this shall be the lease of tenant for life during his life, and the confirmation of him in remainder or reversion, and after his decease it shall be the lease of him in remainder or reversion, Co. Litt. 45 a; *Treport's case*, 6 Co. 14 b.

Leases of settled estates may be authorized by the Court of Chancery.

6. The Court of Chancery in England, so far as relates to estates in England, and the Court of Chancery in Ireland, so far as it relates to estates in Ireland, if it shall deem it proper and consistent with a due regard for the interests of all persons entitled under the settlement, whether an act of parliament, deed, agreement, copy of court roll, will or other instrument, may, subject to the provisions and restrictions of the Act 19 & 20 Vict. c. 120, authorize leases of *settled estates* or of any rights or privileges over or affecting settled

estates, for any purpose whatsoever, whether involving waste or not, provided certain conditions contained in the Act be observed, 19 & 20 Vict. c. 120, s. 2. The term "settled estates," as used in the act, signifies all hereditaments of any tenure and all estates or interests in any such hereditaments; and for the purposes of that act, a tenant in tail, after possibility of issue extinct, is to be deemed to be a tenant for life, *Ib.* s. 1. Rules and orders have been made for regulating proceedings under the Act, 15 Nov. 1856, see 2 Dan. Ch. Pr. 1395—1397, 3rd ed.; and the act has been amended and extended by the stat. 21 & 22 Vict. c. 78. It may be observed that leases granted by trustees under the 10th sect. of the Act 19 & 20 Vict. c. 120, must be settled in Judges' chambers, *In re Procter*, 3 Jur., N. S. 534; 26 L. J., Ch. 464.

7. Any person entitled to the possession or to the receipt of the rents and profits of any *settled* estates, for an estate for life, or for a term of years determinable with his life or for any *greater estate*, either in his own or in the *right of his wife*, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise, and also any person entitled to the possession or to the receipt of the rents and profits of any *unsettled* estate as tenant by the curtesy or in dower or in right of a wife who is seised in fee without any application to the Court of Chancery, may demise the same or any part thereof except the principal mansion house and the demesnes thereof and other lands usually occupied therewith from time to time, for any term not exceeding twenty-one years, to take effect in possession, provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent thereby reserved, and on non-observance of any of the covenants or conditions therein contained; and provided a counterpart of every deed or lease be executed by the lessee, 19 & 20 Vict. c. 120, s. 32.

Tenants for life, &c. may grant leases for twenty-one years.

Every demise authorized by the last preceding section shall be valid against the person granting the same, and other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled, and in the case of unsettled estate against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same, *Ib.* s. 33. In addition to the persons enumerated in the last section, such demises in the case of unsettled estates shall be valid

Against whom such leases shall be valid.

Leases.

Evidence of execution of the lease by lessee.

against the wife of any husband making such demise of estates to which he is entitled in right of such wife, 21 & 22 Vict. c. 77, s. 8.

The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by the Act 19 & 20 Vict. c. 120, s. 34.

Tenants for life, &c. may exercise powers notwithstanding incumbrances.

For the purposes of that act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor or otherwise howsoever to any extent, but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein, 19 & 20 Vict. c. 120, s. 41.

To what settlements this act extend.

The provisions of the act extend to all settlements whether made before or after it shall come in force (1st November, 1856), except those as to demises to be without application to the court, which shall extend only to settlements made after that act shall come into force, *Ib.* s. 44.

Joint tenants, &c.

8. Joint tenants, tenants in common, and coparceners, may either make leases of their own respective parts, Co. Litt. 185 a, or else all may join in a lease to a stranger. If parceners or joint tenants join in a lease, this shall be but one lease, for they have but one freehold; if tenants in common join in a lease, this shall be the several lease of each of their respective interests, Co. Litt. 45 a; 2 Roll. Abr. 64; see 1 Platt on Leases, pp. 124—138.

Ecclesiastical persons.

9. Leases by ecclesiastical persons made by virtue of the statutes 1 Eliz. c. 19, 13 Eliz. c. 10, or 32 Hen. 8, c. 28, must be made by indenture, whether of lands of which they are seised in right of their churches, or of tithes. With respect to the form of leases by ecclesiastical persons, the provisions of the statute 32 Hen. 8, c. 28, are applicable, see Woodfall's L. & T. 160—163, 7th ed. The 6 Will. 4, c. 20, explained and amended by 6 & 7 Will. 4, c. 64, imposes on ecclesiastical persons certain restrictions in respect of the renewal of leases for lives for forty, thirty, and twenty-one years respectively, and for years generally.

Any ecclesiastical corporation aggregate or sole (except any college or corporation of vicars choral, priest vicars, senior vicars, custos and vicars, or minor canons, and ecclesiastical hospital, or master thereof) may, by any deed duly executed, lease all or any part of the lands or houses belonging to such corporation, in his or their corporate capacity, for any term not exceeding ninety-nine years, to take effect in possession for repairing or building houses, 5 & 6 Vict. c. 108, s. 1.

Running water, and water leaves and way leaves may be leased for any term not exceeding sixty years in possession, *Ib.* s. 4.

Leases of mines may be granted for any term not exceeding sixty years in possession, *Ib.* s. 6. The house of residence, offices, gardens, &c., of any archbishop, bishop, or other corporation, are not to be leased, *Ib.* s. 9.

The stat. 5 & 6 Vict. c. 108, empowering ecclesiastical corporations to grant leases for long terms of years must itself be consulted for the form of leases required in cases arising under it. The last act is amended by 21 & 22 Vict. c. 57, which repeals ss. 14 and 18 of the 5 & 6 Vict. c. 108. As to leases by ecclesiastical corporations, see 1 Platt on Leases, 238—312; Woodfall's L. & T. 13—23, 7th ed.; Cripp's Laws of the Church, 225—234; 3 Steph. Comm. 95—105, 4th ed.

Each lease to be granted under this act requires the consent of the Ecclesiastical Commissioners, and, if granted by any incumbent of a benefice, the consent of the patron thereof; and the consent of the lord of the manor is requisite to leases of mines, &c., under copyhold lands, 5 & 6 Vict. c. 108, s. 20. The requisite consent is to be testified by the person being a party to the deed and duly executing it, *Ib.* s. 21.

In any case in which it shall be made to appear to the satisfaction of the *Ecclesiastical Commissioners* for England that all or any part of the lands, houses, mines, minerals, or other property belonging to any ecclesiastical corporation, which are by the 5 & 6 Vict. c. 108, authorized to be leased, might, to the permanent advantage of the estate or endowment, be leased in any manner, any ecclesiastical corporation, aggregate or sole, except as in the said act is excepted, may from time to time, with such consents as in the said act mentioned, and with the approval of the said Commissioners, to be testified by deed under their common seal, lease all or any part of the lands, houses, mines, minerals, or other property belonging to such corporation, whether the same shall or shall not have been previously leased under the 5 & 6 Vict. c. 108, or the 21 & 22 Vict. c. 57, and either in consideration or partly in consideration of premiums or not, or for such other considerations, and for such term or terms, and subject to such covenants, conditions and agreements on the part of the lessee or lessees, and generally in such manner as the said Commissioners shall, under the circumstances of each case, think proper and advisable, 21 & 22 Vict. c. 57, s. 1.

Leases under 5 & 6 Vict. c. 108, may be granted in consideration of premiums.

No lease of any lands purchased or acquired, or in which the estate or interest of a lessee, or of a holder of copyhold or customary land, shall be purchased or acquired by any ecclesiastical corporation under the Act 21 & 22 Vict. c. 57, shall, except under the express power contained in the Act 5 & 6 Vict. c. 108, or in the Act 21 & 22 Vict. c. 57, be made or granted otherwise than from year to year, or for a term of years in possession, not exceeding fourteen years, at the best annual rent that can be reasonably gotten without fine, and the lessee

Leases.

is not to be made punishable for waste, or exempted from liability in respect of waste, 21 & 22 Vict. c. 57, s. 9.

Leases granted by deans and chapters for long terms of years not in conformity with the disabling and restraining statutes, are not void but voidable only, *Pennington v. Cardale*, 3 H. & N. 656.

Incumbent of
ecclesiastical
benefice.

The incumbent of any ecclesiastical *benefice*, which comprehends every rectory, vicarage, perpetual curacy, donative, endowed public chapel, parochial chapelry, and district chapelry, the incumbent whereof in right thereof shall be a *corporation sole*, may, by deed under his hand and seal, with the consent of the patron of the benefice and the bishop of the diocese where the same is locally situated, and in the case of copyholds, with the consent also of the lord of the manor, where his licence is necessary, lease any part of the glebe lands or other lands belonging to the benefice, either with or without the farm buildings, for any term not exceeding fourteen years in possession, at the best yearly rent, payable quarterly, 5 Vict. sess. 2, c. 27, ss. 1, 15. The act contains particular directions as to the covenants to be contained in the lease, and the lessee is required to execute the lease, or a counterpart thereof. In certain cases, which are specified, leases may be granted for twenty years, *Ib.* The parsonage house and offices, and ten acres of glebe, situate most conveniently for occupation, are not to be leased, *Ib.* s. 2. Contracts for letting houses in which spiritual persons are required by the bishop to reside are void, 1 & 2 Vict. c. 106, s. 59.

Before any lease is granted a surveyor is to be appointed, who is to make necessary certificates, valuation and reports respecting the intended lease, 5 Vict. sess. 2, c. 27, s. 3.

The lessor's receipt for the counterpart, or an attested copy of the lease, is to be evidence of the execution of the counterpart; and the execution of the bishop and patron is to be evidence that the lands are proper to be leased, and that the best rent is reserved, and that the covenants contained in the lease are proper, *Ib.* s. 4.

No surrender of any lease granted under the act is valid unless the bishop, patron and incumbent shall be made parties to and execute the surrender, which is to have no operation until executed by all such parties, *Ib.* s. 5.

The provision of the stat. 5 Vict. sess. 2, c. 29, enabling incumbents to grant leases of glebe lands, that the rent be reserved quarterly, is imperative; and the Court of Chancery will not decree specific performance of an agreement which reserves the rent half-yearly, *Jenkins v. Green*, 5 Jur. (N. S.) 304.

Universities
and colleges.

By "The Universities and College Estates' Act, 1858," the universities of Oxford, Cambridge and Durham, and any college therein respectively, and the colleges of Winchester and Eton, and the cathedral or house of Christ Church, in Oxford, may, after the 23rd of July, 1858, by indenture, sealed by such university or college with

their common seal, lease all or any of the lands, tenements and hereditaments, corporeal and incorporeal, which then were or at any time thereafter should, either at law or in equity, be vested in such college or university (except as hereinafter mentioned, see below), with the appurtenances, for any term of years not exceeding twenty-one years, to take effect in possession, at the best rent that can be reasonably obtained for the same, without taking any fine, and so as the rent be made payable half-yearly or oftener, and so as sufficient power of entry be reserved for securing the payment of the rent and the performance of the lessee's covenants therein, and so as the lessee be not thereby made punishable for waste, and so as the lessee execute a counterpart of the lease; and every such lease may be in such terms and conditions as such university or college may think reasonable, 21 & 22 Vict. c. 44, s. 10. And notwithstanding the provisions of the stat. 18 Eliz. c. 6, it is not necessary to reserve or make payable in corn any part of the rent to be reserved upon any lease granted under the act, *Ib.* s. 30.

Leases.

The same universities and any college therein respectively, and the colleges of Winchester, Eton, and Christ Church, may in like manner lease all or any of the lands, &c., to which they are entitled as aforesaid (except as aforesaid), for any term not exceeding ninety-nine years in possession, for purposes of building and repairing, and other purposes in the act mentioned, which must be consulted as to the form and terms on which such leases are to be granted, 21 & 22 Vict. c. 44, s. 11. Power is also given to grant mining leases for a term not exceeding sixty years, *Ib.* s. 20.

Power to grant mining leases.

The act does not authorize the lease of any house, or building, or lands forming part or attached to or locally situate within the boundaries or precincts of any college, or of any offices, out-buildings, yards and gardens to any such college adjoining, and which may be necessary or convenient for actual occupation by the members of any such college; or the lease of any mines, quarries, ways, watercourses, or other easements, the grant whereof may be prejudicial to the convenient enjoyment of any such house or building, or the offices or gardens thereto belonging, 21 & 22 Vict. c. 44, s. 26.

Particular property not to be leased.

At common law municipal corporations had the same unlimited right of alienation of their corporate estates, consistently with their particular by-laws, as private individuals, except in the case of property held by them upon special trusts or for charitable purposes, *Smith v. Barrett*, 1 Sid. 162; *Attorney-General v. Lord Gore*, Barnard's Ch. 145; *Gozna v. Aldermen of Grantham*, 3 Russ. 261.

But some restraints are now imposed upon them by the Municipal Corporation Acts, which contain provisions as to leases to be granted by them, 5 & 6 Will. 4, c. 76, ss. 94—97; 6 & 7 Will. 4, c. 104. See Grant on Corporations, 140—153; 1 Platt on Leases, 312—

Municipal corporations.

Leases.

320. All leases by corporations aggregate must be made by deed under the common seal, *Kyd on Corporations*, 263.

Executors, &c.

10. Executors and administrators, unless restrained by the leases granted to their testators, may grant underleases, and the rent reserved will be assets in their hands, *Sir Moyle Finch's case*, 6 Co. 67; Bac. Abr. *Leases* [J. 7]. A guardian in socage, or a testamentary guardian cannot make a lease of his ward's lands, *Roe v. Hodgson*, 2 Wils. 129, 135; unless it be limited to the term of his minority, 2 Roll. Abr. 41; *ante*, p. 1013.

Mortgagors,
&c.

11. Neither a mortgagor nor a mortgagee can make a lease to bind the other without his concurrence, *Keech v. Hall*, Dougl. 21. Where lands in mortgage are to be leased, the mortgagor and mortgagee ought to concur in the lease, *Doe d. Barney v. Adams*, 2 Cr. & J. 232; *Edwards v. Jones*, 1 Coll. 247. It is a common practice to reserve the rent to the mortgagee during such part of the term as the mortgage shall be outstanding, and after it shall have been discharged, to the mortgagor for the remainder of the term, if any; but as rent reserved to the mortgagor would be but an annual sum in gross, it is better to reserve it generally during the term, leaving the law to carry it to the person legally entitled, *Whitlock's case*, 8 Co. 696, 71 *a*; 1 Platt on Leases, 174. Where the mortgagor and the mortgagee concur in the grant, the covenants on the lessee's part should be entered into with the mortgagee with a view to their running with the land. If entered into with the mortgagor, they are merely covenants in gross, and of no value at law to an assignee of the mortgage, *Webb v. Russell*, 3 T. R. 393; *Stokes v. Russell*, 3 T. R. 679; 1 Platt on Leases, 174, 175.

Copyholders.

12. A copyholder cannot, except by special custom, or the licence of the lord, demise his lands for longer than a year without incurring a forfeiture, *Melwich v. Luter*, 4 Co. 26; *Lady Montague's case*, Cro. Jac. 301. So having a licence to lease, he must pursue his licence strictly, otherwise the lease is void, Com. Dig. tit. *Copyhold*. And a lease by parol, or to commence *in futuro*, will incur a forfeiture, *East v. Harding*, Cro. Eliz. 498. See Shelford on Copyholds, 152—163; 1 Platt on Leases, pp. 105—122.

The 19 & 20 Vict. c. 120, s. 43, does not authorize the granting of a lease of any copyholds not warranted by the custom of the manor, without the consent of the lord. All the powers to grant leases contained in that act and the 21 & 22 Vict. c. 77, include powers to lords of settled manors to give licences to their copyhold tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorized or granted of freehold hereditaments under those acts, 21 & 22 Vict. c. 77, s. 3.

Trustees for
charities.

13. Leases of charity lands are under the peculiar cognizance of the Court of Chancery. Formerly the trustees of charities usually had

the legal estate vested in them, and no precise rule could be laid down, as to the mode in which leases of charity estates were to be granted, but if they were unreasonably long, without any circumstances showing that they were made in the fair management of the estate, and for the benefit of the charity, the Court of Chancery would set them aside as breaches of trust. See *Shelford's Law of Mortmain and Charities*, 687—713. Where the mode of granting leases is prescribed by the founder, the terms must be strictly adhered to, otherwise the lease cannot be supported, *Attorney-General v. Griffith*, 13 Ves. 565; Woodf. L. & T. 38. But where there is no power, the trustees must be guided by the general principles of the court, *Attorney-General v. Owen*, 10 Ves. 555; *Attorney-General v. Cross*, 3 Mer. 540. See 1 Platt on Leases, 347—366. The Charity Commissioners for England and Wales may sanction building leases, working mines, doing repairs and improvements to charity estates, 16 & 17 Vict. c. 137, s. 21, which will have the same validity as if authorized by the terms of the trust affecting the charity, *Ib.* s. 26. Applications for the authority of the board to grant building, repairing, improving, mining or other leases, or to cut timber or make roads or other improvements, can only be made by the trustees or persons acting in the administration or management of any charity, or the estates or property thereof. A form of application for authority to grant a lease is subjoined to the instructions concerning applications to the board under the 16 & 17 Vict. c. 137.

Under the Charitable Trusts Acts, 1853 and 1855, some of the lands holden upon trusts for charities have become vested in "The Official Trustee of Charity Lands," 16 & 17 Vict. c. 137, s. 48; 18 & 19 Vict. c. 124, s. 15. The acting trustees of every charity, or the majority of them, if such majority do not consist of less than three persons, may grant all such leases or tenancies of land belonging thereto, and vested in the official trustee of charity lands as they would have power to grant in the due administration of the charity, if the same land were vested in themselves, and all covenants, conditions and remedies contained in or incident to any lease or tenancy so granted, may be enforced by and against the trustees of the charity and their alienees and assigns, in like manner as if such lands had been legally vested in the trustees granting such lease or tenancy at the time of the execution thereof, and had legally remained in or had devolved to such trustees, their alienees or assigns, subject to the same lease or tenancy, 18 & 19 Vict. c. 124, s. 16.

14. By 12 & 13 Vict. c. 106, s. 147, and 1 & 2 Vict. c. 110, s. 49, 7 & 8 Vict. c. 96, the assignees of bankrupts and insolvent debtors are authorized to execute, for the benefit of the creditors, all powers vested in any bankrupt and insolvent debtor of granting leases and the like.

Leases.

Power for
acting trustees
to grant leases.

Assignees of
bankrupts, &c.

Leases.

Aliens.

15. Aliens are prohibited, by 32 Hen. 8, c. 16, s. 13, from acquiring real property, but an alien may, after naturalization or denization, make valid leases of lands. See 7 & 8 Vict. c. 66, s. 5, *post*, p. 1023.

Under powers.

16. Where a power is given to make leases, it must be strictly pursued, for if all the requisites, as to the number of years, its taking effect in possession or reversion, reservation of rent, and the like, be not carefully observed, the lease will be void at law against the remainderman, *Shep. Touch.* 269; *Pulteney v. Lady Cavan*, 5 T. R. 567. Leases invalid owing to a deviation from the terms of the power are to be deemed contracts in equity for such leases as might have been granted under the power, but where the grantor or reversioner is willing to confirm, the lessee cannot obtain a variation of the terms of the contract, 12 & 13 Vict. c. 26. Where upon or before the acceptance of rent under any such invalid lease as above mentioned any receipt, memorandum or note in writing confirming such lease is signed by the person accepting such rent or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease, 13 & 14 Vict. c. 17, s. 2. Where the reversioner is able and willing to confirm, the lessee is bound to accept a confirmation accordingly, which may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or some persons by them respectively thereunto lawfully authorized, 13 & 14 Vict. c. 17, s. 3. Leases invalid at the time of the granting thereof may become valid if the grantor continues in the ownership until the time when he might lawfully grant such lease, 12 & 13 Vict. c. 26, s. 4. When a valid power of leasing is vested in a person granting a lease, which by reason of the interest of such person or otherwise cannot take effect independently of such power, the lease is to be deemed to be granted under the power, although it is not referred to in such lease, 12 & 13 Vict. c. 26, s. 5. There is a saving of the rights of the lessees under covenants for title, and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant and conditions, *Ib.* s. 6. The act does not extend to any lease by an ecclesiastical corporation or spiritual person, or to any lease of the possessions of any college, hospital or charitable foundation, *Ib.* s. 7.

By estoppel.

17. Leases made by persons not having any vested estate at the time will operate by estoppel on their ownership when they acquire the same, and where the lease is by indenture, both the lessor and the lessee are concluded from avoiding the same, *Palmer v. Ekins*, *Ld. Raym.* 1550; *Bac. Abr. Leases* [O]. Neither a married woman nor an infant can be bound by estoppel. See 1 *Platt on Leases*, 52—64.

2. *To whom to be made.*

To persons in general.

18. Leases may be made to all natural-born subjects who are not

under any legal disability, as infancy, &c. Leases to infants are voidable only, not absolutely void. By the 29 Geo. 2, c. 31, amended by the 11 Geo. 4 & 1 Will. 4, c. 65, infants, lunatics, or persons appointed on their behalf, and *femes covert*, are enabled, on a summary application by petition to the Court of Chancery, to surrender leases for lives or years, in order to obtain a renewal, and to accept the renewed leases. So much of this act as relates to lunatics is repealed by the 16 & 17 Vict. c. 70, but committees of lunatics under an order of the Lord Chancellor may accept surrenders of leases and make new leases, s. 134.

Leases.
Infants, &c.

19. An alien friend may take a lease of a house for the purpose of trade or commerce, *Pilkington v. Peach*, 2 Show. 135; *Rex v. Eastbourne*, 4 East, 103; but the 32 Hen. 8, c. 16, s. 13, makes void leases to artificers or handicraftsmen.

Every alien now residing in any part of the United Kingdom, and being the subject of a friendly state, may by grant, lease, demise, assignment, bequest, representation or otherwise, take and hold any lands, houses or other tenements for the purpose of residence or of occupation by him or her or his or her servants, or for the purpose of any business, trade or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions and privileges, except the right to vote at elections for members of parliament, as if he were a natural-born subject of the United Kingdom, 7 & 8 Vict. c. 66, s. 5.

Subjects of a friendly state may hold lands for purpose of residence for twenty-one years.

20. By the 7 & 8 Will. 3, c. 37, no spiritual or lay corporation can take a lease of real property without a licence in mortmain. Where lands are already in mortmain, being vested in an ecclesiastical corporation, a lease of such lands to charitable uses is not within the stat. 9 Geo. 2, c. 36, *Walker v. Richardson*, 2 M. & W. 882. By the 1 & 2 Vict. c. 106, spiritual persons are not to take to farm for occupation any lands exceeding eighty acres without the consent of the bishop, and then not beyond seven years.

Corporations.

Clergy.

3. *Of what things to be made.*

21. Leases may be made of any thing corporeal or incorporeal that lies in livery or grant, *Shep. Touch.* 268. Not only lands and houses, but also goods and chattels, may be let for years; but the interest of the lessee therein differs from that which he has in lands; for if one lease for years a stock of live cattle, and any of them die, the property vests absolutely in the lessee. It ought, therefore, to be stipulated in such leases, that the lessee should leave other cattle, equal in number and quality, at the end of the term; and if it be a lease of dead stock, that it be left in as good condition, allowing for reasonable use and wear in the meantime, *Bac. Abr. Leases* [A.]

Of things in general.
Goods and chattels.

<i>Leases.</i>	22. Incorporeal hereditaments, as advowsons, tithes, commons, tolls, fairs, markets, &c., and also offices, provided they are not offices requiring personal skill and attendance, and connected with the administration of justice, are all demisable, <i>Mark Steward's case</i> , 9 Co. 99; <i>Howard v. Wood</i> , 2 Lev. 245; <i>The Case of Sutton</i> , 6 Mod. 57; <i>Anonymous</i> , Ld. Raym. 1038; but dignities cannot be granted for years, Co. Litt. 16 b; and rent, properly speaking, cannot by a subject be reserved out of incorporeal hereditaments, Co. Litt. 47 a, 144 a; except on a lease of a remainder or reversion of an incorporeal hereditament, Gilb. on Rents, 23; but if a lease for years be made of an incorporeal inheritance rendering rent, such reservation is good to bind the lessee by contract, and to give the lessor an action of debt on nonpayment, Gilb. Rents, 24. See 1 Platt on Leases, pp. 24—27. With respect to commons, the 13 Geo. 3, c. 81, s. 15, empowers the lord of any manor, with the consent of three-fourths of the persons having right of common, by public auction, to lease, for any term not exceeding four years, any part of the wastes or commons not exceeding a twelfth part thereof; the rents to be applied in draining and improving the residue of the wastes and commons. See 8 & 9 Vict. c. 118, ss. 31, 108, 112, as to leases of allotments for labouring poor.
Incorporeal hereditaments. Not office of trust, nor dignities.	
Not rent.	
But commons.	

4. *How made.*

By deed.	23. The principal formalities requisite to a valid lease are a deed on paper or parchment, signing, sealing, attesting, and executing and delivering, at the same time being impressed with the proper stamp. See <i>ante</i> , pp. 840—847.
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III. PARTS OF A LEASE.

A lease by deed usually consists of the premises, *habendum* and *tenendum*, *reddendum* or reservation, covenants, and provisoes, or conditions.

1. *The Premises.*

Date, &c.	24. The premises include all that precedes the <i>habendum</i> , Shep. Touch. 75; as the date, names of the lessor and lessee, the parcels or things, which ought to be accurately described, and the exception or thing excepted, if there be any. Where the lessor has the freehold, the exception ought to be made to him and his heirs and assigns; but where he has only a term of years, then the exception ought to be to him, his executors, administrators and assigns.
Exception.	

2. *The Habendum.*

Office of the habendum.	25. The <i>habendum</i> and <i>tenendum</i> is that part which begins with the words "To Have and to Hold." The office of the <i>habendum</i> is
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to limit the certainty of the estate to the lessee. When the *habendum* is repugnant to or inconsistent with the premises it is void, *Throckmorton v. Tracy*, Plowd. 153; *Baldwin's case*, 2 Co. 23; otherwise it serves to limit, enlarge and qualify the premises, Co. Litt. 183; *Altham's case*, 8 Co. 154 b; see *ante*, p. 863.

Leases.

3. *The Reddendum.*

26. The *reddendum* is a clause whereby rent is reserved, beginning with the words "yielding and paying." Where the lessor is owner of the fee, the reservation ought to be to himself, his heirs and assigns (or, if the lessors be a corporation, their successors and assigns), and not to the heirs, executors, administrators and assigns; but it will, nevertheless, go to his heirs, because it follows the reversion, Co. Litt. 47 a. And so if rent be reserved generally without saying to whom, the law will make the distribution, Plowd. 171. And in *Whitelock's case* it was agreed that in leases under a power this was the safer way, 8 Co. 71; although in practice it is most usual in such leases to reserve the rent "to the tenant for life, and after his decease to the person or persons who shall be entitled to the reversion and inheritance under the instrument creating the power." Where one seised in fee settles lands on himself for life, with remainders to other persons, reserving a leasing power, which he afterwards exercises, reserving rent to himself, his heirs and assigns, those in remainder shall have the rent, *Greenaway v. Hart*, 14 C. B. 340; 18 Jur. 449; 23 L. J., C. P. 115; see *Bassett v. Bassett*, Amb. 843. Where the reservation is particular, as "to the lessor," without saying more, or "to the lessor and his assigns," there the rent shall determine with the death of the lessor, though the lease upon which it is reserved be still continuing, because the agreement of the parties here prevents the construction of the law, Plowd. 171; Hard. 91. So where the reservation is, "to the lessor and his executors," he having the freehold, it will determine at his death, *Sachaverell v. Froggart*, 2 Saund. 367; but where the words "during the term" are inserted in the reservation, the rent will go over to the heir, because these words declare the intention of the lessor, that the rent shall be of equal duration with the lease, *Sury v. Brown*, Latch. 92. Where the lessor has only a term of years, it ought to be reserved "to his executors and administrators," *Sir Matthew Jenison v. Lord Lexington*, 1 P. Wms. 555; but if reserved to his heirs and assigns, with the additional words "during the term," the law will direct that it shall go to the executors, *Sacheverell v. Frogate*, 1 Vent. 161.

Reservation of rent.
To whom to be made.

If rent be reserved generally during the term, without saying to whom, the law will carry it to the owner of the reversion after the

Leases.

lessor's death; to his heir, if he be seised in fee; to his executor or administrator, if he have a chattel interest only. It is immaterial whether the heir be heir in tail, in borough English, or gavelkind, or heir on the part of the mother. In each of these cases the rent will follow the nature of the reversion; and accordingly, in practice, this is considered the best mode of reservation, 2 Platt on Leases, 88, 89.

What not a reservation.

27. A particular sum to be paid over and above the rent annually is held to be not a reservation, *Smith v. Mapleback*, 1 T. R. 441. Rent reserved generally is not due until the end of the year, *Cole v. Sury*, Latch. 264; *Smith v. Mapleback*, 1 T. R. 445. Where there are special days of payment limited upon the *reddendum*, the rent ought to be computed according to the *reddendum*, and not according to the *habendum*, *Tomkins v. Pinsent*, 2 Ld. Raym. 820.

4. *Covenants and Conditions.*

Different kinds of covenants.

28. As to the general nature of covenants, and the distinction between covenants implied, express, inherent, collateral, &c., also between covenants and conditions.

Express.

29. Likewise an express covenant controls one that is implied; thus the implied covenant for quiet enjoyment is restrained by the express covenant that the lessee shall enjoy without eviction by the lessor, or any claiming under him, 4 Co. 80; Bac. Abr. Leases [B. 7]. So under an express covenant to pay rent and repair, a lessee is bound to pay rent and rebuild when the house is burnt down, *Paradine v. Jane*, All. 26; but he is not so bound in law, because his special agreement alters the law, and makes his words to be taken most strongly against himself, Plowd. 29. Caution is therefore to be recommended in introducing covenants that they be sufficiently explicit to meet the views of the parties.

Running with the land.

30. Most covenants in leases, whether implied or express, are said to run with the land, as for quiet enjoyment, to pay rent, to repair and keep in repair, not to cut down timber, not to do waste, &c., *Hyde v. Dean and Chapter of Windsor*, Cro. Eliz. 457; *Spencer's case*, 5 Co. 16; Shep. Touch. 176; *Thursby v. Plant*, 1 Saund. 241. So by subsequent authorities, other covenants have been held to run with the land, as not to carry on a particular trade, and to reside upon the premises, *Tatem v. Chaplin*, 2 H. Bl. 133; *Mayor of Congleton v. Pattison*, 10 East, 130; to supply the demised premises with water, *Jourdain v. Wilson*, 4 B. & A. 266; so likewise a covenant to insure, with a provision to lay out the money in rebuilding the premises, has been held to run with the land, *Vernon v. Smith*, 5 B. & A. 1. But to make a covenant run with the land, there must be a privity of estate between the contracting parties, *Webb v. Russell*, 3 T. R. 393; on the other hand, a covenant not to hire particular per-

sons to work in a mill has been held to be a personal covenant, *Mayor of Congleton v. Pattison*, 10 East, 136; so a covenant to pay a sum annually to a parish, *Mayho v. Buckhurst*, Cro. Jac. 438; or to refer to arbitration, *Gray v. Cuthbertson*, 1 Selw. N. P. 493; see 2 Platt on Leases, 400—432.

31. Where a tenant covenants to pay rent, he cannot set off monies paid for repairs, unless authorized so to do by express stipulation, *Weigall v. Waters*, 6 T. R. 488; *Leeds v. Cheetham*, 1 Sim. 146; he may, however, plead certain payments, as of the land-tax, for the landlord, *Whitfield v. Brandwood*, 2 Stark. 440; or of the ground-rent, *Sapsford v. Fletcher*, 4 T. R. 511; *Andrew v. Hancock*, 1 B. & Bing. 37. See *Denby v. Moore*, 1 B. & Ald. 123; *Stubbs v. Parsons*, 3 B. & Ald. 516. Where a tenant pays property tax assessed on the premises, and omits to deduct it in his next payment of rent, he cannot afterwards recover the amount as money paid to the use of his landlord, *Cumming v. Bedborough*, 15 M. & W. 438.

32. A general covenant to repair and deliver up in repair extends to all buildings erected during the term, *Donse v. Cale*, 2 Vent. 126; *S. C. nom. Donse v. Earle*, 3 Lev. 264. Where a lease contains, besides a general covenant to repair, also a particular covenant to repair, care must be taken to draw these covenants with such clearness that the one may not be considered as qualifying the other, *Horsfall v. Testar*, 7 Taunt. 385; *S. C. 1 J. B. Moore*, 89. Where a lease contains a covenant by the lessee to repair and keep in repair, and also to repair within three months after notice, with a clause of re-entry for non-performance of covenants, the landlord may re-enter, as for a forfeiture, on finding the premises out of repair, *Baylis v. Le Gros*, 4 Jur., N. S. 513.

33. Where a lease contains a covenant to repair and also to insure in a specific sum, the liability of the lessee on the former covenant is not limited to the amount of the sum to be insured under the latter, *Pitt v. Laming*, 4 Camp. 73. A lease may be forfeited by breach of covenant to insure, *Wilson v. Wilson*, 14 C. B. 616.

34. Church and poor's rates are not included in a covenant to indemnify against all duties, charges and taxes imposed on the land, 8 Mod. 314; but a covenant to pay a rent-charge, free from all taxes, extends to all taxes imposed by parliament, 2 Salk. 221; *Smith v. Humble*, 15 C. B. 321.

35. A covenant not to assign is not a common and usual covenant, see *ante*, p. 97, AGREEMENTS FOR LEASE; if therefore it is intended that the lessee shall not assign, it must be provided for by express stipulation; but the courts construe such restraints upon alienation with jealousy, *Church v. Brown*, 15 Ves. 258. Under a contract for a lease of a mill, to contain "all usual and necessary covenants and provisoes,"

Leases.

Particular covenants.

To pay rent.

To repair.

To insure.

To pay taxes.

Not to assign.

Leases.

and particularly a covenant by the lessee to keep the mill in good tenantable repair, the lessee is not entitled to have introduced into the covenant the words "damages by fire or tempest only excepted," *Sharp v. Milligan*, 23 Beav. 419. A covenant "not to assign, set over, or otherwise do or put away the lease or premises," does not extend to underletting, *Blencowe v. Bugby*, 3 Wils. 234; but if the proviso or condition be not to assign the whole or any part of the premises, "or not to assign or otherwise part with, &c.;" then neither an assignment nor an underlease can be made, *Roe v. Sales*, 1 M. & Selw. 297. There is nothing unreasonable in a covenant not to sub-let without licence, or in a proviso for re-entry on the whole premises on breach of any covenant in the lease, *Haberdashers' Company v. Isaac*, 3 Jur., N. S. 64. If after assignment the lessor accepts rent, he dispenses with the condition, *Roe v. Harrison*, 2 T. R. 425; *Brummell v. Macpherson*, 14 Ves. 173; and if a lease be upon condition that the lessee shall not assign without licence, and the lessor afterwards gives licence, the condition is entirely destroyed, *Dumpor's case*, 4 Co. 119; but the condition may be revived by a deed of defeasance, or it may be kept alive by a particular provision in the lease, see further *ante*, ASSIGNMENTS (*Lease*), p. 388.

For renewal.

36. A covenant in a lease to grant a further term at the same rent and under and subject to the same covenants as in the original lease, is now held to be a covenant for a single renewal, and that it does not entitle the lessee to have a covenant for renewal inserted in the new lease, *Iggulden v. May*, 9 Ves. 325; 7 East, 237; see *Hodges v. Blagrove*, 18 Beav. 404. The terms for the renewal must, therefore, be defined with precision, or otherwise the construction of the courts will be generally against the lessee, *Baynham v. Guy's Hospital*, 3 Ves. 298. See *Attorney-General v. Corporation of Great Yarmouth*, 21 Beav. 625, as to renewals under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, ss. 29, 95. A. granted a lease, and covenanted that he would always, at any time when requested by the lessees, &c., demise the premises for the further term of thirty-one years, in which new lease were to be contained the same rents, covenants, articles, clauses, provisions and agreements; it was held, that this amounted to a covenant for perpetual renewal, *Copper Mining Company v. Beach*, 13 Beav. 478. A testator covenanted for a perpetual renewal of a lease; it was held, that the proper form of lease to be granted by trustees was a demise for a new term, reciting the original covenant by the testator, *Ib.* Under such a covenant the trustees are not bound to enter into a covenant to renew, but the original covenant, together with the decision of the court of the lessee's right to a perpetual renewal, should be recited in the lease granted by the trustees, and the trustees should purport to demise in obedience thereto, *Hodges v. Blagrove*, 18 Beav. 404. See *Stephens*

v. *Hotham*, 1 Kay & J. 571; 1 Jur., N. S. 842; 24 L. J., Ch. 665. As to the burthen and benefit of renewals of leases made by or on behalf of parties having limited interests in the demised property, see *Huddleston v. Whelpdale*, 9 Hare, 775, 783, 785. Although *prima facie* a lessor shall not be taken to have intended to enter into a covenant for perpetual renewal, yet if there are expressions indicative of such an intention the court will give effect thereto, *Hare v. Burges*, 4 Kay & J. 45; 27 L. J., Ch. 86. See *Hope v. Corporation of Gloucester*, 2 Jur., N. S. 27; 25 L. J., Ch. 146.

Leases.

37. A condition for re-entry on non-payment of rent is usually inserted in leases, but in order to take advantage of this covenant, a formal demand of the rent must be made on the day specified in the condition; but the demand may be dispensed with by the special contract of the parties, *Dormer's case*, 5 Co. 40; *Harris v. Masters*, 2 B. & C. 490. When the condition is, that the lease on non-payment of rent shall be absolutely void, and the lessee commits a breach of the condition, the lease is absolutely determined, and cannot be set up again by acceptance of rent; but, if the clause be that for non-payment of rent it shall be lawful for the lessor to re-enter, the lease is only voidable, and may be affirmed by acceptance of rent or any other act, if the lessor had notice of the breach of condition, *Duppa v. Mayo*, 1 Saund. 287, n. 16; *Croft v. Lumley*, 5 Ell. & Bl. 648. The receipt of rent is no waiver of a continuing breach of covenant, *Doe d. Baker v. Jones*, 5 Exch. 498.

Condition for re-entry.

Lease to be void or voidable on condition broken.

IV. INCIDENTS TO A LEASE.

38. The principal incidents to a lease entitled to notice here, are the commencement, duration and determination of the term, the rights and liabilities of parties, the payment and apportionment of rent, estovers, and waste.

Incidents to a lease.

1. *Commencement, &c. of a Lease.*

39. A lease may be made for life or for years, or there may be a tenancy at will, from year to year, or at sufferance.

Lease for life.

40. Leases for years must have a certain commencement and a certain determination, so that the continuance of the term must be certain, otherwise it is not good, *Bishop of Bath's case*, 6 Co. 35; Co. Litt. 46 a; Shep. Touch. 267. A lease for life cannot begin at a day to come; if, therefore, a lease be made to have and to hold from Michaelmas next, it is not good, Shep. Prec. 48, 49; but a lease for lives to commence "from the date" shall be construed to include the day of the date, *Hatter v. Ash*, 1 Ld. Raym. 84. A lease for years may be made to begin at a day to come, and the lessee before entry has an *interesse termini* which is grantable to another, Co. Litt. 46.

Commencement of the term.

Leases.

Attornment was formerly incident to leases for lives or years, but is now rendered unnecessary by the 4 Ann. c. 16. See *ante*, p. 431.

Lease at will.

41. A lease at will is where lands are let to be held at the will of the lessor or lessee, or more properly of both, Co. Litt. 55. Tenancies at will may still be created by express contract, *Richardson v. Langridge*, 4 Taunt. 128; but in most other cases such a holding is now deemed to operate as a tenancy from year to year, *Clayton v. Blakey*, 8 T. R. 3; except where rent has not been received, *Doe v. Stennett*, 2 Esp. 717. A tenant from year to year is entitled to the same advantages as a tenant for a term of years, and his interest vests in his personal representatives, *Shore v. Porter*, 3 T. R. 13; and he is bound only to tenantable, not lasting repairs, *Countess of Salop v. Compton*, Cro. Eliz. 777; *Ferguson v. —*, 2 Esp. N. P. C. 590. As between the landlord and tenant of premises let from year to year, there is no obligation upon the former to do substantial repairs in the absence of an express stipulation to that effect, *Gott v. Gandy*, 2 Ell. & Bl. 845; 18 Jur. 310; 23 L. J., Q. B. 1.

From year to year.

Tenancy at sufferance.

42. A tenant at sufferance is he who enters by lawful demise or title, and afterwards holds over by wrong, Co. Litt. 57 b. So where a person takes possession of an empty house, and enters into a treaty with the landlord for a lease which was never made, *Doe v. Quigley*, 2 Camp. 504. By the 4 Geo. 2, c. 28, tenants for life or years holding over after the determination of their estates, after demand made and notice in writing given, are liable to pay double rent. Leases for life or years may be determined by merger or surrender. By the 8 & 9 Vict. c. 106, s. 9, it is enacted, that when the reversion on a lease shall, after the 1st October, 1845, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to and obligations on the same reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease. This section of the act is retrospective in its operation, *Upton v. Townend*, 17 C. B. 542. The effect of this is to prevent the injustice which occurred when a person having only a limited interest in the property in question granted a lease, to take effect out of that limited interest, and subsequently became seised of the reversion; the effect of which was to merge the reversion of the lessor, to which the rent was incident, and to enable the lessee to hold for the residue of his lease discharged from payment of rent, see *Webb v. Russell*, 3 T. R. 678; *Wootley v. Gregory*, 2 You. & J. 536; *Barton v. Barclay*, 7 Bing. 745; *Thorn v. Woolcombe*, 3 B. & Ald. 586.

When reversion on a lease is gone, the next estate to be deemed reversion.

Determination of the term.

43. A lease for years may be determined by the expiration of the period, by forfeiture for breach of some covenant, or by some express condition in the deed.

A lease for a running period of three, seven, or fourteen years, &c., without prescribing at whose option it shall determine, will be determinable at the option of the lessee only, *Dunn v. Spurrier*, 3 B. & P. 442; *Webb v. Dixon*, 9 East, 16. See *ante*, p. 98, pl. 7. A tenancy at will is determined by either party, *James v. Dean*, 11 Ves. 392; but a tenancy from year to year requires that there should be six months' notice to quit.

Leases.

2. *Rights and Liabilities of Parties.*

44. Between a lessor and a lessee there is a privity of estate and a privity of contract, and they are reciprocally bound to each other by the covenants in the lease implied or express. The lessee is not discharged from the payment of rent or other covenants by assigning, *Rushden's case*, Dyer, 4 b; *Chancellor v. Poole*, Dougl. 736; not even if the lessor has accepted the assignee as tenant, *Thursby v. Plant*, 1 Saund. 237. Lessor and lessee.

45. An assignee may discharge himself of his liability by assigning over, he being liable only in respect of his privity of estate, *Pitcher v. Tovey*, 4 Mod. 71; Bac. Abr. tit. Covenants [E. 4]. Some covenants bind assignees, whether named or not, *Spencer's case*, 5 Co. 16 a. Some covenants do not bind the assignee unless named, as if a man covenants for himself and his assigns to build a thing not in being, as a new wall, on a part of the land demised, this shall bind the assignee, because named, *Spencer's case*, 5 Co. 19; *Grey v. Cuthbertson*, 2 Chitt. Rep. 482. Some covenants do not bind the assignee, although named, being merely personal; as to build a house on other land, or to do any collateral act not affecting the land, *Collison v. Lettsom*, 6 Taunt. 224; so the assignee may also take advantage of all covenants which concern the land, as to pay rent, not to commit waste, &c., Co. Litt. 214; Com. Dig. Covenant [B. 37]. Assignee.

46. Between a lessor and an underlessee there is neither privity of estate or contract, so that neither can sue, or be sued by, the other on the breach of any covenants entered into by the lessor and the original lessee, *Holford v. Hatch*, Dougl. 174, 183. Underlessee.

47. An heir may take advantage of all covenants that run with the land, *Sale v. Kitchingham*, 10 Mod. 158; but is not bound by them. Heir.

48. At common law no grantee or assignee of a reversion could take advantage of covenants in the lease granted by those under whom they claimed; but the 32 Hen. 8, c. 34, gives to all grantees the full benefit of such covenants entered into with lessees for life and years, and the like remedy to lessees against the grantees of the reversion. This statute applies only to cases of demise by deed, and an assignee of the reversion cannot maintain assumpsit on a contract to repair made with the assignor, *Standen v. Christmas*, 11 Jur. 694; Grantee of the reversion.

Leases.

16 Law J., Q. B. 265. See *Bickford v. Parson*, 5 C. B. 921. On this statute see *Greenaway v. Hart*, 14 C. B. 340; 18 Jur. 449; 23 Law J., C. P. 115; *Badeley v. Vigurs*, 4 Ell. & Bl. 71; 1 Jur., N. S. 159; 23 Law J., Q. B. 377; *Wright v. Burroughes*, 3 C. B. 685.

Executors, &c. 49. An executor and administrator is liable to the payment of the rent and performance of the covenants in a lease provided he has assets, *Pitcher v. Tovey*, 4 Mod. 71. So an executor or administrator may take advantage of all collateral or personal covenants, Com. Dig. Covenant [B. 1].

3. *Payment, &c. of Rent.*

Rent, when payable.

50. By the old law, rent was demandable and payable before the time of sunset of the day whereon it was reserved, in order to take advantage of a condition of re-entry, and to save a forfeiture; yet in other respects it was held that the rent was not due until midnight, or the last minute of the natural day, 1 Saund. 287, n. 16. Where a time certain is appointed for the payment of the rent, neither the agent or principal is bound to attend at any other time. A covenant for the payment of rent at a specified time, when no particular place of payment is mentioned, is analogous to a covenant to pay a sum of money in gross on a certain day, and it is accordingly incumbent on the covenantor to seek out the person to be paid, and pay or tender him the money, *Haldane v. Johnson*, 8 Exch. 689; 17 Jur. 937; 22 Law J., Exch. 264.

Apportionment of rent at common law.
By statute.

51. By the common law, generally speaking, rent cannot be apportioned, *Emott v. Cole*, Cro. Eliz. 256; *Countess of Plymouth v. Throgmorton*, 1 Salk. 65; but by the 11 Geo. 2, c. 19, where the tenant for life dies in the interval between two days of payment, the personal representatives may recover a proportional part of such rent. This statute is held to apply also to tenants in tail. In the case of a lease under a power, granted after the passing of the 4 & 5 Will. 4, c. 22, if the lessor die before the rent becomes due, by that act, the rent will be apportioned. See *ante*, pp. 285, 286; *Cattley v. Arnold*, 5 Jur. N. S. 361.

4. *Estovers.*

Definition.

52. Estovers is the liberty of taking the necessary materials for the use and furniture of a house or farm, which is incident to the estate of every tenant for life or years, without provision of the party; these are housebote, that is, wood for rebuilding or repairing the house, or for consumption; ploughbote, for repairing ploughs, &c.; and haybote, for repairing hedges; all which the lessee may take without any assignment, unless restrained by special covenant to the contrary, Co. Litt. 41 b.

Different kinds.

5. *Waste.*

53. Waste is a spoil or destruction in houses, gardens, trees or other corporeal hereditaments, to the disherison of him that has the remainder or reversion in fee-simple or fee-tail, Co. Litt. 53. It is either voluntary, as by pulling down a house; or permissive, by suffering it to fall. Whatever does a lasting damage to the freehold or inheritance is waste, *Herlakenden's case*, 4 Co. 64. So the removing of fixtures, or whatever was annexed to the freehold, was waste according to the old law, although put up by the tenant himself, *Cooke's case*, Moore, 177; *Lord Darcy v. Askwith*, Hob. 234; but it has since been decided that a tenant may remove all things necessary for trade, as brewing utensils, furnaces, coppers, &c. which he himself put up, provided they be removed within the term, *Ex parte Quincy*, 1 Atk. 477; *Poole's case*, 1 Salk. 368; but not sheds, or other buildings erected for agricultural purposes, if they be let into the soil, *Elwes v. Maw*, 3 East, 38; but not where they merely rest upon blocks or pattens, and are not let into the soil, *Naylor v. Collinge*, 1 Taunt. 19. Where the tenant of a farm or land, with the consent in writing of his landlord, erects at his own cost, farm buildings, engines or machinery, either for agricultural purposes, or for purposes of trade and agriculture, they will now be the property of the tenant, and removable by him subject to the provisions of the stat. 14 & 15 Vict. c. 25, s. 3, although built in or permanently fixed to the soil, or the landlord may purchase them. As to the law respecting fixtures, see Wms. on Exors. Part. II. B. II. Ch. 2, sect. 3; Broom's Legal Maxims, 370—383, 3rd ed. An action of waste did not lie at common law against the lessee for life or years, but by the Stat. of Gloucester, lessees are made punishable for waste, and that too in case of accidental fire, 2 Inst. 301; and this extended to a tenant from year to year, 2 Inst. 302; but not to a tenant at will, Co. Litt. 57 a; 5 Co. 13 b. Now, by the 6 Ann. c. 31, it is provided, that if a house be destroyed by tempest, lightning, or accidental fire, it is no waste, and no action shall be maintained against any person in whose house any fire shall accidentally begin, with a proviso that this act shall not defeat any agreement of parties. See *Viscount Canterbury v. Attorney-General*, 1 Phill. C. C. 306. An action of waste, before its abolition, was very seldom resorted to in practice, as the lessor was mostly protected by the covenants of the lease against waste; and, with respect to damages, they may now be obtained by an action on the case, Petersd. Abr. tit. *Waste*. It was questioned whether a tenant from year to year is liable for permissive waste, *Harnett v. Maitland*, 4 Dowl. & L. 545; 16 M. & W. 257. As to leases, see further, Woodfall on Landlord and Tenant; Comyns on Landlord and Tenant; Chambers on Leases; Bacon's Abridgment, tit. *Leases*; Platt on Leases.

What understood by waste.

Removal of fixtures.

Leases.—*Assignments of Leases*, see *ante*, ASSIGNMENTS, p. 388, and *Forms*, No. CLXXXV.—CLXXXVIII., pp. 389—396.



V. STAMPS ON LEASES.

The following is contained in the schedule to the Act 13 & 14 Vict. c. 97 :—

LEASE or TACK of any lands, tenements, hereditaments or heritable subjects, granted in consideration of a sum of money by way of *fine*, premium or grassum paid for the same, *without any yearly rent, or with any yearly rent under 20l.*

The same duty as for a conveyance on the sale of lands for a sum of money of the same amount.

For the duty thereon see CONVEYANCE, *ante*, pp. 879, 880.

(*Save and except leases and tacks for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole, where the duties on such leases and tacks respectively would, under the provisions of this act, amount to 1l. 15s. or upwards.*)

LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects <i>at a yearly rent (a)</i> , <i>without any</i> sum of money by way of <i>fine</i> , premium or grassum paid for the same ;	£	s.	d.
Where the yearly rent shall not exceed 5 <i>l.</i> . .	0	0	6
And where the same shall exceed 5 <i>l.</i> and not exceed 10 <i>l.</i>	0	1	0
And where the same shall exceed 10 <i>l.</i> and not exceed 15 <i>l.</i>	0	1	6
And where the same shall exceed 15 <i>l.</i> and not exceed 20 <i>l.</i>	0	2	0
And where the same shall exceed 20 <i>l.</i> and not exceed 25 <i>l.</i>	0	2	6
And where the same shall exceed 25 <i>l.</i> and not exceed 50 <i>l.</i>	0	5	0

(a) See 17 & 18 Vict. c. 83, s. 23, *post*, p. 1038.

LEASE or TACK—*continued.*

	£	s.	d.	Stamps.
And where the same shall exceed 50 <i>l.</i> and not exceed 75 <i>l.</i>	0	7	6	
And where the same shall exceed 75 <i>l.</i> and not exceed 100 <i>l.</i>	0	10	0	
And where the same shall exceed 100 <i>l.</i> , then for every 50 <i>l.</i> and also for any fractional part of 50 <i>l.</i>	0	5	0	

LEASE or TACK of any lands, tenements, hereditaments or heritable subjects, granted in consideration of a sum of money by way of *fine*, premium or grassum, and also of a yearly rent amounting to 20*l.* or upwards

(*Save and except the leases and tacks herein before excepted.*)

Both the *ad valorem* duties payable for a lease in consideration of a fine only and for a lease in consideration of a rent only of the same amount.

LEASE or TACK of any *mine* or *minerals* or other property of a like nature, either with or without any other lands, tenements, hereditaments or heritable subjects, *where any portion of the produce* of such mines or minerals *shall be reserved to be paid in money or kind*;

If it shall be stipulated that the value of such portion of the produce *shall amount at least* to a given sum per annum, or if such value *shall be limited not to exceed* a given sum per annum, to be specified in such lease or tack, then the said *ad valorem* duty on leases shall be charged in respect of the *highest* of such sums so given or limited for any year during the term of such lease or tack;

And where any *yearly sum* shall be reserved in addition to or together with such produce, relative to the yearly amount or value of which produce there shall be no such stipulation or limitation as aforesaid, the said *ad valorem* duty shall be charged in respect of such *yearly sum*;

And where *both a certain yearly sum and also such produce* relative to the yearly amount or value of which there shall be such stipulation or limitation as aforesaid shall be reserved, the said *ad valorem* duty shall be charged on the *aggregate* of such yearly sum and also of the highest yearly amount or value of such produce.

GENERAL REGULATIONS as to Leases and Tacks:

Where, in any of the aforesaid several cases of lease or tack, any fine, premium or grassum, or any rent payable under any lease or tack, shall consist wholly or in part of *corn, grain or victual*, the value of such corn, grain or victual shall be ascertained or estimated at and after any permanent rate of conversion which the lessee may be specially charged with or have it in his option to pay; and if no such permanent rate of conversion shall have been stipulated, then in England and Ireland respectively at and after the prices, upon an average of twelve calendar months preceding the first day of January next before the date of such lease or tack, of the average prices of British corn published in the London Gazette in the manner directed by any act in force for the commutation of tithes in England and Wales; and in Scotland at and after the fiars prices of the county in which the lands or any part thereof lie, upon an average of seven years preceding the date of such lease or tack; and such respective values shall be deemed and taken to be the fine, premium or grassum, or yearly rent, or part thereof respectively, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid;

And where *separate* and *distinct* fines, premiums or grassums shall be paid to several lessors, being joint tenants, tenants in common or coparceners in England or Ireland, or proprietors *pro indiviso* in Scotland, who shall by one and the same deed or instrument jointly or severally demise or lease the lands, tenements, hereditaments or heritable subjects of which they are such joint tenants, tenants in common or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, or where *separate* and *distinct* rents shall be by one and the same deed or instrument reserved or made payable, or agreed to be reserved or made payable, to the lessor or to several lessors, being such joint

GENERAL REGULATIONS—continued.

tenants, tenants in common or co-parceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, the *ad valorem* duties shall be charged in respect of the *aggregate* amount of such fines, premiums or grassums, and of such rents respectively ;

And where any person, having contracted for, but not having obtained, a lease of any lands or other property, shall contract to sell such lands or other property, or any part thereof, or his right or interest therein or thereto, to any other person, and a lease shall accordingly be granted to such other person, the purchase money or consideration which shall be paid or given or agreed to be paid or given to the person immediately selling to such lessee shall be set forth in such lease, and such lease shall be charged as well with the said *ad valorem* duty on such purchase money or consideration as with the duty on the purchase money or consideration or rent paid or reserved to the lessor.

LEASE or TACK, of any kind, <i>not otherwise charged..</i>	1	15	0
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Provided always, that no *ad valorem* duty shall be chargeable in respect of any *penal rent*, or increased rent in the nature of a *penal rent*, reserved in any such lease or tack as aforesaid.

LEASE.—Any ASSIGNMENT or SURRENDER of a lease or tack upon any other occasion than a sale or mortgage

A duty equal to the *ad valorem* duty with which a similar lease or tack would be chargeable under this act.

Provided always, that where a similar lease or tack would be chargeable under this act with any stamp duty amounting to 1*l.* 15*s.* or upwards, then such assignment or surrender shall be chargeable only with a duty of

1 15 0

Provided also, that no stamp duty, except the said *ad valorem* duty, shall be chargeable for or in respect of any lease, whether in possession, reversion or remainder, expressed to be granted in consideration of the surrender of an existing lease and also of a sum of money.

And in all the said several cases of LEASE or TACK, see PROGRESSIVE DUTY, *ante*, p. 887.

Stamps.

The following is contained in the schedule to the Act 17 & 18 Vict. c. 83:—

LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects, for any term of years exceeding thirty-five, at a yearly rent, with or without any sum of money by way of fine, premium or grassum paid for the same, the following duties in respect of such yearly rent:—

spect of such yearly rent:—				Duties.						
				If the Term shall not exceed 100 Years.			If the Term shall exceed 100 Years.			
				£	s.	d.	£	s.	d.	
Where the yearly rent shall not exceed £5				0	3	0	0	6	0	
And where the				£5 and not exceed £10	0	6	0	0	12	0
same shall ex-										
ceed - - -										
"	"	10	"	15	0	9	0	0	18	0
"	"	15	"	20	0	12	0	1	4	0
"	"	20	"	25	0	15	0	1	10	0
"	"	25	"	50	1	10	0	3	0	0
"	"	50	"	75	2	5	0	4	10	0
"	"	75	"	100	3	0	0	6	0	0

And where the same shall exceed £100 then for every £50, and also for any fractional part of £50 1 10 0 3 0 0

And where any such lease or tack as aforesaid shall be granted in consideration of a fine, premium or grassum, and also of a yearly rent, such lease or tack shall be chargeable also, in respect of such fine, premium or grassum, with the *ad valorem* stamp duties granted under the head or title of "Conveyance" in the schedule annexed to the Act 13 & 14 Vict. c. 97, *ante*, pp. 879, 880.

EXEMPTION.

Any lease made in pursuance of the Trinity College, Dublin, Leasing and Perpetuity Act, 1851.

CONVEYANCE of any kind or description whatsoever in England or Ireland, and charter, disposition or contract containing the first original constitution of feu and ground annual rights in Scotland (not being a lease or tack for years), in consideration of an annual sum payable in perpetuity or for any indefinite period, whether fee farm or other rent, feu duty, ground annual, or otherwise

The same duties as on a lease or tack for a term exceeding 100 years, at a yearly rent equal to such annual sum.

EXEMPTIONS.

Stamps.

Any lease or tack for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

Any grant in fee simple or in perpetuity, made in Ireland, in pursuance of the Renewable Leasehold Conversion Act, or in pursuance of the Trinity College (Dublin) Leasing and Perpetuity Act, 1851.

All which said leases or tacks and grants respectively shall be chargeable with the stamp duties to which the same were subject and liable before the passing of the Act 16 & 17 Vict. c. 63.

DUPLICATE OR COUNTERPART AND PROGRESSIVE DUTY.

EVERY SUCH LEASE or tack and every such conveyance, charter, disposition or contract as aforesaid hereby charged with duty, and the duplicate or counterpart thereof respectively, shall be chargeable with the respective stamp duties granted and made payable under the several heads or titles of "Duplicate or Counterpart," and "Progressive Duty," in the schedule annexed to the Act 13 & 14 Vict. c. 97, *ante*, pp. 887, 888.

LICENCE TO DEMISE copyhold lands, tenements or hereditaments, or the memorandum thereof, if granted out of court, and the copy of court roll of any such licence if granted in court—

Where the clear yearly value of the estate to be demised shall be expressed in such licence and shall not exceed £75	{	The same duty as on a lease at a yearly rent equal to such yearly value, under the act of the 13 & 14 Vict. c. 97.
		£ s. d.
And in all other cases		0 10 0

Notwithstanding anything contained in the Act 13 & 14 Vict. c. 97, the counterpart of any leases of lands, tenements or hereditaments being duly stamped with the said stamp duty of 5s., or any higher stamp duty (exclusive of progressive duty), and *not being executed or signed* by or on the behalf of any *lessor or grantor*, shall be available as a counterpart without being stamped with a particular stamp for denoting or testifying the payment of the stamp duty chargeable on the original lease, 16 & 17 Vict. c. 59, s. 12.

Counterparts of lease not required to be impressed with denoting stamp.

<i>Stamps.</i>	Where any lease or tack of any lands, tenements or hereditaments
Leases for less than a year chargeable with stamp duty on the rent.	or heritable subjects shall be made for any term or period less than a year at a rent reserved or payable for the same, such lease or tack shall be chargeable with the same <i>ad valorem</i> duty as a lease or tack at a yearly rent of the same amount as the sum so reserved or payable, 17 & 18 Vict. c. 83, s. 23.



No.
CCCCXXXIX
Of a House.

No. CCCCXXXIX.

Lease of a House. (General Precedent.)

Stamp.	<i>Obs.</i> As to the necessary stamp, see <i>ante</i> , p. 1034.
Demise.	<i>This Indenture</i> made &c. Between (<i>Lessor</i>) of &c. of the one part and (<i>Lessee</i>) of &c. of the other part <i>Witnesseth</i> That in consideration of the rent and covenants hereinafter reserved and contained on the part of the said (<i>lessee</i>) his executors administrators and assigns to be paid performed and kept He the said (<i>lessor</i>) <i>Doth</i> by these presents grant demise and lease unto the said (<i>lessee</i>) his executors administrators and assigns <i>All</i> that messuage &c. situate &c. [<i>here describe boundaries and abutments minutely</i>] together with all the appurtenances [<i>or “cellars vaults areas ways ancient and other lights pumps drains sewers waters watercourses easements profits commodities advantages emoluments and all manner of privileges appendages and appurtenances whatsoever”</i>] to the said messuage or tenement hereby demised or intended so to be belonging (<i>except and always reserved</i> out of this demise the free passage and running of water and soil from the other buildings of &c. and his tenants by and through the channels and drains of the said hereby demised premises the tenant or tenants of such other houses and buildings on request paying his or their share and proportion of the charges of cleansing and repairing the same as need shall require)
General words.	
Exception.	
Habendum.	<i>To have and to hold</i> the said messuage or tenement and all other the premises hereby demised with their appurtenances (except as aforesaid) unto the said (<i>lessee</i>) his executors administrators and assigns from the day of now next ensuing for and during and unto the full end and term of years fully to be complete and ended determinable nevertheless as hereinafter mentioned <i>Yielding and paying</i> therefore yearly and every year during the said term unto the said (<i>lessor</i>) his
Term.	
Reddendum.	

heirs and assigns the yearly rent or sum of £ of lawful money of Great Britain payable quarterly upon the four usual quarterly days of payment in the year (that is to say) on the day of &c. by even and equal portions without any deduction or abatement whatsoever for or on account of any taxes charges rates assessments or impositions whatsoever parliamentary parochial or otherwise already or at any time hereafter to be imposed (except the land tax or the sewers rate &c. *as the case may be*) the first payment thereof to be made on the day of next [save and except at all times during the said term such proportionate part of the said yearly rent of £ as shall or may grow due during such time as the messuage or tenement hereby demised shall without the default of the said (*lessee*) be and remain uninhabitable by reason of accidental fire] And the said (*lessee*) for himself his heirs executors administrators and assigns doth hereby covenant with the said (*lessor*) his heirs executors administrators and assigns in manner following (that is to say) that he the said (*lessee*) his heirs executors and administrators shall and will from time to time and at all times during the said term of years (except in the case of fire as aforesaid) well and truly pay or cause to be paid unto the said (*lessor*) his heirs and assigns the said yearly rent of £ upon the several days and in the manner hereinbefore mentioned or appointed for payment thereof and according to the true intent and meaning of these presents *And also* shall and will during the said term bear pay and discharge all and all manner of taxes rates duties charges assessments and impositions whatsoever already or at any time hereafter during the said term to be charged or imposed upon or in respect of the demised premises or any part thereof (except as before excepted) [*And also* shall and will during the said term when need shall require bear pay and allow a reasonable share with the other tenants for supporting repairing cleansing amending and rebuilding all party walls gutters sewers drains and cesspools belonging to the said premises] *And also* that he the said (*lessee*) his executors and administrators shall and will at all times during the said term well and sufficiently repair support amend paint pave cleanse and keep the said premises with the appurtenances with all manner of needful and necessary reparations cleansings and amendments whatsoever And the said premises so being well and sufficiently repaired supported amended paved painted cleansed and kept together with all the doors wainscots shelves dressers drawers

No.
CCCCXXXIX
Of a House.

Covenants from
lessee.

To pay rent.

To pay taxes.

To repair.

To deliver up
in good repair.

No.
CCCCXXXIX
Of a House.

To insure.

Liberty for
lessor to enter
and view state,
&c.

Not to carry on
noxious trades.

locks keys bolts bars staples hinges hearths chimney pieces mantel pieces chimney jambs footpaces slabs covings windows sashes shutters partitions sinks pumps pipes wells privies drains cesspools cisterns and all things which now are or which at any time during the said term shall be fixed or fastened to or set up in or upon the said premises or any part thereof or belonging thereto shall and will at the expiration or other sooner determination of the said term which shall first happen peaceably yield up to the said (*lessor*) his heirs and assigns together with all and singular the fixtures contained in the inventory hereunder written in as good condition as the same now are [reasonable use and wear thereof and casualties by fire in the mean time only excepted] *And also* shall and will during the said term insure and keep insured the said premises and outbuildings hereby demised for the sum of &c. at least in the office or some other public office for insurance in London or Westminster and when thereunto required produce the policy and receipt for such insurance to the said (*lessor*) his heirs and assigns [See a fuller covenant to insure, *post*, pp. 1058, 1063] *And also* that it shall be lawful for the said (*lessor*) his heirs and assigns or his or their stewards surveyors workmen and others employed by him or them twice in every year (or oftener if he or they shall see occasion) in the daytime to enter into the said premises or any part thereof for the purpose of viewing and examining the state and condition of the same and of such decays defects and wants of reparation to give or leave notice in writing in or at the same premises for the amendment thereof and that he the said (*lessee*) his executors administrators or assigns shall and will within three months after such notice well and sufficiently repair amend and make good all such decays defects and wants of reparation and amendment *And further* that the said (*lessee*) shall not nor will at any time or times during the said term carry on or cause or permit to be carried on any or either of the businesses of a soap boiler tallow chandler oil refiner vintner distiller brewer alehouse keeper victualler tripe boiler butcher baker blacksmith whitesmith coppersmith brazier tinman plumber dyer shoemaker pewterer furrier fellmonger chemist druggist or shopkeeper of any description nor to use the same premises nor suffer the same to be used as a slaughter house glass-house auction room potato warehouse or police office nor for the purpose of carrying on any dangerous noxious noisy or offensive trade whatever without the license and consent of

the said (*lessor*) first had and obtained for that purpose (a) And (b) also that he the said (*lessee*) his executors or administrators shall not nor will assign set over or otherwise dispose of or part with the said premises hereby demised or any part thereof or his or their estate or interest therein (other than by will and testament to his wife children or next of kin as the case may be) without the special license and consent in writing of the said (*lessor*) his heirs or assigns first had and obtained for that purpose [but which said license shall not extend nor be deemed to extend to any future assignee or be considered as a waiver of the present covenant for restraining the assignment of the present lease or the term or interest which shall be then to come therein *Provided nevertheless* and it is hereby declared and agreed by and between the parties to these presents that the said (*lessor*) his heirs and assigns shall not nor will arbitrarily and without good and sufficient reason and cause assigned withhold such consent as aforesaid nor shall or will demand or require any sum of money reward or premium for giving or granting the same] *Provided always* and these presents are upon this express condition that if the rent hereby reserved or any part thereof shall be unpaid for the space of days next after any of the days on which the same ought to have been paid (although no formal or legal demand shall have been made thereof) or in case of the breach or nonperformance of any of the covenants and agreements herein contained on the part of the said (*lessee*) his executors administrators or assigns to be done kept or performed (c)

No.
CCCCXXXIX
Of a House.
Not to assign.

Clause of re-
entry.

(a) If it be an inn or public-house, instead of the covenant in the text, say, "And also that he the said (*lessee*) his executors &c. shall and will during the continuance of the said term hereby demised keep open the said messuage or tenement and allow the said premises with the appurtenances to be used as and for an inn for the reception and entertainment of persons resorting thereto with horses and cattle And also shall and will annually at the stated times apply for and use his best endeavours to obtain all such licences at his and their own expense as are or may be necessary for keeping open the same And shall not do or suffer to be done any matter or thing in or about the said premises during the said term whereby the said licences may be forfeited or refused."

As to an inn,
&c.

(b) As to the covenant against assigning, see sect., *ante*, pp. 97, 1027, 1028.

(c) "Or if the said (*lessee*) his executors or administrators shall be adjudged bankrupt or if he or they shall make any composition with his or their creditors for the payment of his or their debts or shall make any assignment of his or their estate and effects for the benefit of his or their creditors or if any writ or writs of execution shall issue out against his or their person or

No.
CCCCXXXIX
Of a House.

Covenants from
lessor.

For quiet en-
joyment.

Determination.

Renewal of
lease.

To pay taxes.

then and from thenceforth and in either of such cases it shall be lawful for the said (*lessor*) his heirs or assigns [*or* “his executors administrators or assigns”] into and upon the said demised premises or any part thereof in the name of the whole to re-enter and the same to have repossess and enjoy as in his or their former estate and as if these presents had not been made and executed *And* the said (*lessor*) doth hereby for himself his heirs executors administrators and assigns covenant with the said (*lessee*) his executors administrators and assigns that he and they paying the rent hereby reserved and performing the covenants stipulations restrictions and agreements hereinbefore contained shall and may peaceably hold and enjoy the said premises hereby demised during the said term without the lawful let suit forcible eviction or interruption of the said (*lessor*) his heirs or assigns or any person or persons lawfully claiming or to claim by from or under him them or any of them (a) [*Provided always* (b) and it is hereby mutually de-

persons estate or estates goods chattels and effects which shall first happen Then &c.” See *post*, p. 1055.

(a) “*And also* that the said (*lessor*) his heirs or assigns [*or* ‘their successors or assigns,’ see *ante*, p. 1028, pl. 36] shall and will before the expiration of this present lease at the request costs and charges of the said (*lessee*) his executors administrators or assigns grant and execute unto him or them a new and fresh lease of the messuage or tenement and all other the premises hereby demised with their appurtenances for the further term of years to commence from the expiration of the term hereby granted at the same yearly rent and subject to the like covenants provisoes and agreements as are contained in these presents the said (*lessee*) his executors &c. executing a counterpart thereof and also paying a fine or sum of £ .” If there is to be a further renewal (see *ante*, p. 1028, pl. 36), then say, “*And* at the like request costs and charges shall and will at the expiration of such further term of years grant a further lease of the same premises at and under the same yearly rent and subject &c. and so from time to time at the like request &c. at the expiration of every such renewed lease of the said premises grant the further term of years to commence from the expiration of every such renewed lease until the full term of ninety-nine years to be computed from the commencement of this present lease he the said (*lessee*) his executors &c. always paying &c.” If the lessor covenant to pay the taxes, then, instead of the clauses in the text respecting the taxes, say, “*And also* that he the said (*lessor*) his heirs and assigns shall and will from time to time and at all times hereafter during the continuance of the term hereby granted well and truly pay all rates duties charges and assessments whatsoever parliamentary parochial or otherwise that shall or may be charged rated or imposed on the said hereby demised premises and every part thereof and therefrom save harmless and keep indem-

(b) See note (a), p. 1045.

clared and agreed that if the said (*lessee*) his executors administrators or assigns shall be desirous of putting an end to this demise at the expiration of seven or fourteen years and of such his or their desire shall give six months' notice in writing to the said (*lessor*) his heirs or assigns in such case upon payment of all arrears of rent and performance of all the covenants herein reserved and contained on the part of the lessee to be paid done performed and kept this present indenture of lease and every clause or thing herein contained shall cease determine and be utterly void anything herein contained to the contrary thereof in anywise notwithstanding] *In witness &c.*

No.
CCCCXXXIX
Of a House.

[*The Inventory to which the above-written Indenture refers.*]

No. CCCCXL.

Lease of a Farm (b).

No. CCCCXL.
Of a Farm.

This Indenture made &c. Between (*lessor*) of &c. of the one part and (*lessee*) of &c. of the other part *Witnesseth* That for and in consideration of the yearly rent hereinafter reserved and

nified the said (*lessee*) his executors administrators and assigns." If the lessor covenant to suspend the rent and to repair and rebuild in case of fire, instead of the exception in the text for abatement of the rent and rebuilding in case of fire, and the covenant to insure, say, "*And also* in case the said premises hereby demised shall be destroyed or damaged by fire tempest or any other accident the rent herein reserved shall be suspended or abated until the said premises shall be rebuilt and made fit for the habitation of the said (*lessee*) his executors &c. And that the said (*lessor*) his heirs or assigns shall forthwith with all proper and convenient speed cause the same to be rebuilt or repaired so and in such good and substantial manner that the same may be as commodious in all respects as they were before such destruction or damage happened." As to the determination of the term, see *ante*, p. 1030, pl. 43.

To repair.

Rebuild.

(a) If the proviso be for either the lessor or the lessee to determine the lease, say, "*Provided always* and these presents are upon this condition that it shall and may be lawful to and for either the said (*lessor*) his heirs or assigns or the said (*lessee*) his executors administrators or assigns to determine and make void this lease at the expiration of the first seven or fourteen years of the said term of _____ years hereby granted by causing six months' previous notice in writing for that purpose to be given to or left for the other of them his heirs executors administrators or assigns at his or their then usual place of abode anything herein contained &c. *In witness &c.*"

(b) See Agreements as to Farms, Nos. LXIII., LXIV., *ante*, pp. 101—107. The above form is given as containing many useful clauses, and not as a lease settled for any particular case.

No. CCCCXL. of the covenants conditions and agreements hereinafter contained and on the part of the said (*lessee*) his executors administrators and assigns to be observed and performed the said (*lessor*) doth by these presents demise lease and to farm let unto the said (*lessee*) his executors administrators and assigns *All* that messuage or farm house of him the said (*lessor*) situate in aforesaid with all and singular the houses out-houses edifices buildings barns stables yards gardens and farm to the same messuage belonging *And also* all those several closes inclosures pieces and parcels of arable meadow and pasture land to the said messuage and farm belonging or therewith usually held and occupied containing together by survey thereof acres whether the same be more or less *And also* all those cottages to the said farm and premises belonging all which premises are situate lying and being in aforesaid or in some other town parish or place to the same near or adjoining and are now in the occupation of the said (*lessee*) and of his under-tenants of the said cottages Excepting and reserving all and all manner of timber and other trees wood and underwood which now are or shall at any time during the term hereby granted be in or upon the said premises or any part thereof with liberty of ingress egress and regress to and for the said (*lessor*) his heirs and assigns at all seasonable times into upon and from the said premises in order to view top lop fell stub up hew saw square convert and carry away the same trees wood and underwood *And also* in order to plant any sort of trees in the several hedges coppices or woods on the same premises and to view the condition thereof with all means needful for those purposes or any of them and with liberty for the purpose of sawing such trees wood and underwood as aforesaid to make a sawpit or sawpits upon any convenient part or parts of the said premises making reasonable compensation for any damage which may be occasioned by such acts or any of them *And also* with liberty to convert the said trees wood and underwood into charcoal and for that purpose to dig and take turves earth sand and other materials necessary for that purpose from any convenient part or parts of the same premises and to carry away the charcoal making reasonable compensation for any damage which may be occasioned by such acts or any of them Excepting and reserving such part or parts of the said premises not exceeding twenty acres as the said (*lessor*) his heirs and assigns shall after giving to the said (*lessee*) his executors administrators or assigns or leaving

No. CCCCXL.

Of a Farm.

Exceptions.

All trees.

To convert
trees into char-
coal.

Of so much,
not exceeding
twenty acres,
as lessor shall
require.

at his or their usual place of abode six calendar months' notice in writing think proper to take for the purpose of planting the same with wood or building thereon or exchanging the same with liberty of ingress egress and regress to and for the said (*lessor*) his heirs or assigns with all means needful for the purpose of planting the same with wood or building thereon the said (*lessor*) his heirs or assigns making reasonable compensation for any damage which may be occasioned thereby and also making during the remainder of the term hereby granted an abatement in the rent hereby reserved at the rate of one pound by the acre for every part of the premises which shall be so taken for the purposes aforesaid Excepting and reserving all mines and quarries of metals minerals stones or other substances now open or known or which at any time during the said term hereby granted shall be found out or discovered in under or upon the said premises or any part thereof with liberty of ingress egress and regress to and for the said (*lessor*) his heirs or assigns in order to search for dig get take and carry away the same and to make any road or roads way or ways or other work or works for the purposes aforesaid with all means needful for those purposes or any of them making reasonable compensation for any damage which may be occasioned by such acts or any of them Excepting and reserving all game fish and wild fowl with full and free liberty unto the said (*lessor*) his heirs and assigns and unto every other person or persons by his or their appointment or permission at all seasonable times to hunt shoot course fish fowl and sport in over and upon the said premises or any part or parts thereof at any time during the said term hereby granted the said (*lessor*) his heirs or assigns making reasonable compensation for any damage occasioned thereby *To have and to hold* the said messuage or farm house cottages lands meadows pastures and other the hereditaments and premises hereby demised with their appurtenances except as before excepted unto the said (*lessee*) his executors and administrators from the day of now last past for and during the term of 21 years yielding and paying therefore yearly during the said term unto the said (*lessor*) his heirs or assigns at his mansion house situate at the rent or sum of £ of lawful money of Great Britain upon the day of and the day of in every year in equal portions except the last half-year's rent of the said term which is hereby agreed to be paid upon the day of

No. CCCCXL.
Of a Farm.

Mines and quarries, with liberty to lessor to work the same.

Game, fish, and wild fowl, with liberty for lessor to sport over the premises.

Habendum.

No. CCCCXL.

Of a Farm.Additional rent
for ploughing
land not in
tillage.For every acre
which is over-
cropped.Lessee's cove-
nants.To pay the
rent and all
taxes and out-
goings, except
land tax.

next before the expiration of this demise the first half-yearly payment of the said yearly rent to begin and be made upon the day of now next ensuing the date of these presents *And also* yielding and paying the further yearly rent of £ for every acre of the said premises not having been in tillage within years last past which the said (*lessee*) his executors administrators or assigns shall plough or convert into tillage at any time during the continuance of the said term and so in proportion for any less quantity than an acre on the days aforesaid the first payment of each of the said yearly rents or sums lastly hereinbefore reserved to be made on such of the days of payment aforesaid as shall first happen after the ploughing or conversion into tillage in consequence whereof the same shall become payable and to continue during the residue then to come of the said term *And also* yielding and paying the further yearly rent of £ for every acre of the arable land hereby demised which the said (*lessee*) his executors administrators or assigns shall during the term hereby granted overcrop or use contrary to the course of husbandry hereinafter prescribed and so in proportion for any less quantity than an acre on the days aforesaid the first payment of each of the said yearly rents or sums lastly hereinbefore reserved to be made on such of the said days of payment as shall first happen after the commission of the act or acts in consequence whereof the same shall become payable and to continue during the residue then to come of the said term *And* the said (*lessee*) doth hereby for himself his heirs executors and administrators covenant with the said (*lessor*) his heirs and assigns in manner following (that is to say) that he the said (*lessee*) his executors or administrators shall and will from time to time and at all times hereafter during the said term hereby granted well and truly pay or cause to be paid the said yearly rent upon the respective days and times and in the manner hereinbefore respectively mentioned and appointed for payment thereof *And also* all taxes rates payments assessments tithe rent charge and outgoings whatsoever to grow due in respect of the said premises except the land tax *And also* in case the said (*lessee*) his executors or administrators shall at any time during the term hereby granted plough and convert into tillage any part of the said demised premises that hath not been in tillage for the space of years last past or overcrop any of the arable lands hereby demised then the said (*lessee*) his executors or administrators shall and will during the then remainder of the said term pay unto the

said (*lessor*) his heirs or assigns the further yearly sum of £ of lawful money aforesaid for every acre so ploughed or converted into tillage as aforesaid and £ of like lawful money for every acre of arable land which shall be overcropped as aforesaid and so in proportion for any greater or less quantity than an acre and longer or shorter time than a year the same to be paid over and above the said yearly rent hereinbefore reserved and at such times of payment as hereinbefore mentioned by equal portions the first payment of each of the said yearly rents lastly hereinbefore mentioned to be made on such of the said days of payment as shall happen next after the commission of the act or acts in consequence whereof the same shall be payable and to be continued during the then remainder of the said term *Provided always* that no receipt for rent shall be a discharge for the said additional rent or rents or for any of the penalties or forfeitures herein mentioned which may happen to be incurred or become payable at any time or times before the giving of such receipt for rent unless such additional rent or rents penalties or forfeitures shall be therein expressly mentioned and appear thereby to be fully satisfied *And further* that he and they shall and will from time to time and at all times during the continuance of the said term at his and their costs and charges when where and so often as occasion shall require and whether particularly required by notice or not maintain in good and substantial condition and repair the said messuage or farm house and all other the erections and buildings now being on the said premises and all new buildings or erections (if any) which shall during the continuance of the said term be erected upon the said premises [*except the parts (if any) which it is not intended that the tenant should repair*] The said (*lessor*) his heirs and assigns upon such reasonable request and timely notice in writing as hereinafter mentioned providing and allowing sufficient rough timber bricks or stones tiles lime iron and other materials for such repairs as aforesaid to be delivered on the said premises or within miles thereof and to be cut and carried respectively at the tenant's expense *And* will insure against fire and show the receipts when required [see *post*, pp. 1058, 1063] *And* shall and will at the end or sooner determination of the said term peaceably yield surrender and give up the said messuage or farm house and all such erections buildings and fixtures as now are or shall during the continuance of the said term be erected upon the said premises or in any way affixed to the free-

No. CCCCXL.
Of a Farm.

No receipt for rent shall be a discharge for additional rent, &c., unless therein mentioned.

To repair the farm house and buildings.

Lessor providing materials on the premises.

To give up the farm house and buildings, &c., in good repair.

No. CCCCXL. <u>Of a Farm.</u>	hold thereof and which as between landlord and tenant are usually considered the property of the landlord unto the said (<i>lessor</i>) his heirs and assigns in good and substantial condition and repair except as aforesaid <i>And</i> shall and will from time to time during the said term well and sufficiently fence dress cut scour cleanse and keep in repair all the hedges ditches fences mounds ways watercourses drains ponds weirs sinks sluices gutters walls pales gates and stiles in upon or belonging to the said premises or any part thereof and at the end or sooner determination of the said term hereby granted shall and will leave and yield up the same well and sufficiently fenced dressed cut scoured cleansed and repaired the said (<i>lessor</i>) his heirs or assigns finding materials in the rough <i>And</i> that it shall be lawful for the said (<i>lessor</i>) his heirs and assigns from time to time and at all times during the said term to enter into and upon the said premises or any part thereof there to view search into and see the state and condition of the same <i>And</i> of all defaults decays or want of reparation then and there found to give to the said (<i>lessee</i>) his executors administrators or assigns or leave at his or their usual place of abode notice in writing to repair and amend the same within calendar months from the day of such notice within which time he or they shall and will repair and amend the same accordingly <i>And further</i> that the said (<i>lessee</i>) his executors administrators or assigns shall not nor will at any time during the said term pare burn rive out dig up plough or convert into tillage any meadow or pasture ground which shall not have been in tillage within years last past without the license or consent in writing of the said (<i>lessor</i>) his heirs or assigns for that purpose first had and obtained <i>And</i> shall not nor will during the said term overcrop any of the said arable lands or use the same or any part thereof contrary to the course of husbandry hereinafter prescribed without the license or consent in writing of the said (<i>lessor</i>) his heirs or assigns for that purpose first had and obtained <i>And</i> shall and will duly regularly and in a proper husbandlike manner lay and spread upon the said premises hereby demised all the dung compost and manure which shall from time to time arise and be made upon the said premises hereby demised or from the produce arising therefrom during the said term and if at the end or sooner determination of the said term any such dung compost or manure shall remain unspread thereupon will and shall leave the same upon the premises
To keep and leave the fences and watercourses in repair.	
That lessor may enter and view the state of the premises.	
To give notice to repair.	
Not to till meadow without the consent in writing of lessor.	
Not to overcrop any lands.	
To spread the manure, or leave what is unspread on the premises.	
Not to sell any	hereby demised without being paid for the same <i>And</i> shall not nor

will at any time or times sell any grass hay straw or other fodder which shall at any time or times during the said term grow upon or be produced from the said premises without bringing back for every quantity of grass hay straw or other fodder sold off the said premises an equal weight of good manure within calendar months after each such sale and shall and will spread the same in a husbandlike manner upon the said premises or leave so much thereof (if any) as shall remain unspread at the end or sooner determination of the said term upon the said premises without being paid for the same.

No. CCCCXL.

Of a Farm.

fodder without
bringing back
an equal
weight of
manure.

The following Covenants within brackets have been inserted in some Leases of Farms in Norfolk.

[*And also* that the said (*lessee*) his executors or administrators shall and will during the continuance of this demise use all the arable lands hereby demised in a proper and husbandlike manner and shall not nor will during the first years of the said term hereby granted take more than two successive crops of corn grain or pulse from off the same or any part thereof *And* when and so often as such two successive crops shall be had or taken shall and will summer till and manure or taithe such lands with sheep in a husbandlike manner and sow the same with turnips for a crop and hoe the same twice and next and immediately after sow the same with summer corn for a crop and with such corn lay the same down with a sufficient quantity of good and proper grass seeds and continue the same so laid for one whole year from the Michaelmas next after the sowing such seeds *And also* that he the said (*lessee*) his executors or administrators shall and will during the last four years of the said term hereby granted farm and cultivate the arable lands hereby demised in four shifts or divisions so and in such manner that in every one of such last four years of the said term hereby granted one fourth part of the said arable lands shall be in a husbandlike manner summer tilled and manured or summer tilled and the sheep to be kept upon the said demised premises properly folded thereon and sown with turnip seed and the turnips arising from which shall be twice well hoed One other fourth part of the said demised arable lands shall be cropped with barley or oats and in a proper manner laid down with clover or other grass seeds and which shall have been in the next preceding year summer tilled and cropped with turnips One other fourth part of the said demised arable lands

To use lands
in a husband-
like manner.

Four years'
course of hus-
bandry.

No. CCCCXI. shall be of olland of one year's layer and which shall have been laid
Of a Farm. down with next preceding year in the manner hereinbefore specified *And* the remaining fourth part of the said demised arable lands shall be cropped with wheat rye oats or peas and which in the next preceding year shall have been of olland of one year's layer *And also* that the said (*lessee*) his executors or administrators shall and will at the expiration of the said term hereby granted leave and yield up unto the said (*lessor*) his heirs or assigns one fourth part of the arable lands hereby demised in a good husbandlike manner summer tilled manured and sown with turnip seed and the turnips arising from which turnip seed shall be twice properly hoed the said (*lessor*) his heirs or assigns paying to the said (*lessee*) his executors or administrators so much money as such turnips shall be valued at within seven days after the expiration of this demise by two indifferent persons one of them to be chosen by the said (*lessor*) his heirs or assigns and the other of them by the said (*lessee*) his executors or administrators or if such two indifferent persons shall not agree in their valuation thereof then by one indifferent person to be chosen by them *And also* that the said (*lessee*) his executors or administrators shall and will at the expiration of the said term hereby granted leave and yield up to the said (*lessor*) his heirs or assigns one other fourth part of the arable lands hereby demised of clover and nonsuch olland of one or more years' layer and which shall have been laid down in a husbandlike manner with barley or oats which shall be the first crop that shall have been taken from the last-mentioned land after the same shall have been in a husbandlike manner summer tilled and sown with turnip seed and the turnips arising from which shall have been twice properly hoed *And* one other fourth part of the arable lands hereby demised of barley or oat stubble and which in the last preceding year shall have been in a husbandlike manner summer tilled and sown with turnip seed and the turnips arising from which shall have been twice properly hoed *And* one other fourth part of the arable lands hereby demised of the stubble of wheat rye oats or peas and which in the last preceding year shall have been of clover or nonsuch olland of one or more years' layer and shall have been laid down in a husbandlike manner with barley or oats which shall be the first crop that shall have been taken from the last-mentioned land after the same shall have been in a husbandlike manner summer tilled and sown with turnip seed and the turnips arising from which shall

To leave one-fourth summer tilled for turnips;

one-fourth in clover;

one-fourth in barley stubble.

have been twice properly hoed *And also* that it shall be lawful for the said (*lessor*) his heirs or assigns to sow clover or other grass seeds in the last year of the continuance of this demise upon the land hereby demised which shall in such last year be sown with barley or oats and that he the said (*lessee*) his executors or administrators shall and will give proper notice to the said (*lessor*) his heirs or assigns of the sowing of such barley or oats and shall and will harrow in the said clover nonsuch or other grass seeds in a husbandlike manner gratis and shall and will carefully preserve the grass arising therefrom from damage for the use and benefit of the said (*lessor*) his heirs or assigns and shall not nor will permit any sheep or cattle or unringed pigs to feed upon the last-mentioned land after the said grass seeds shall be sown thereon] *And* shall and will dress manure improve farm cultivate and manage all and singular the said premises hereby demised according to their several natures and qualities agreeably to the rules of good husbandry and according to the best system practised on lands of the same nature and quality in the neighbourhood thereof [*Here insert any special covenants as to the mode of farming, which will vary according to circumstances*] *And* that the said (*lessee*) his executors administrators or assigns shall not nor will at any time during the said term hereby granted cut down fell grub up destroy top lop or prune or cause or wilfully or knowingly permit or suffer to be cut down felled grubbed up destroyed topped lopped or pruned any timber trees pollards or saplings fit or likely to become timber which now are or at any time hereafter during the said term shall or may be in or upon the said premises hereby demised or any part thereof without the license and consent in writing of the said (*lessor*) his heirs or assigns for that purpose first had and obtained and shall and will protect all the fences young trees layers quicksets shoots and saplings from the stubs of any timber or other trees which now are or at any time hereafter during the said term shall or may be in or upon the said premises or any part thereof from being injured by cattle or sheep *And* that if any person or persons at any time or times during the said term shall hunt shoot course fish fowl or sport without such permission as aforesaid or commit any damage trespass or injury in or upon the said premises the said (*lessee*) his executors administrators or assigns shall and will within twenty-one days after he or they shall be informed thereof give to the said (*lessor*) his heirs or assigns notice thereof and of the name or place of abode of such

No. CCCCL.

Of a Farm.

Landlord may sow grass seeds in last year.

To farm according to the best system in the neighbourhood on similar lands.

Not to injure, lop, or grub up trees, and pollards or saplings, without the lessor's consent.

To give notice to trespassers, and allow them to be sued in lessee's name.

No. CCCCXI.
Of a Farm.

Not to part
 with the pre-
 mises without
 the consent in
 writing of lessor
 or his assigns.

If lessee part
 with the pre-
 mises, to give
 notice in writ-
 ing to lessor,
 and remain
 answerable for
 the rents.

After a
 certain day
 in the term to
 permit landlord
 and the suc-
 ceeding tenants
 to cultivate the
 premises.

person or persons if he or they shall know the same or the best description he or they can give of such person or persons and shall and will warn off every such person and persons and also shall and will permit the said (*lessor*) his heirs or assigns to bring and prosecute any action or actions suit or suits at law against any such person or persons in the name or names of the said (*lessee*) his executors administrators or assigns and shall not nor will release or discharge any such action or suit without the consent in writing of the said (*lessor*) his heirs or assigns the said (*lessor*) his heirs or assigns defraying the costs and expenses of every such action or suit, and saving harmless the said (*lessee*) his executors administrators or assigns therefrom *And* that he or they shall not nor will assign or underlet or otherwise part with the possession of the said premises or any part thereof except the said cottages without the consent in writing of the said (*lessor*) his heirs or assigns for that express purpose first had and obtained [*Or if it is intended that the lease should be assignable*] *That* in case the said (*lessee*) his executors or administrators shall assign underlet or otherwise part with the said premises or any part thereof at any time or times during the said term to any other person or persons the said (*lessee*) his executors or administrators will and shall immediately thereupon give to the said (*lessor*) his heirs or assigns a notice thereof in writing containing a full and proper account and description of the parcels so assigned underleased or parted with if less than the whole of the said premises and also of the person or persons to whom and of the term or period for which such premises or parcels are so assigned underleased or parted with and shall and will remain answerable for the whole of the rents hereby reserved and the same shall be recoverable by distress or otherwise as if the premises or the parcels so assigned underleased or parted with had been occupied by the said (*lessee*) his executors or administrators notwithstanding the said (*lessor*) his heirs or assigns shall have accepted rent from the assignee or underlessee assignees or underlessees thereof *And* that the said (*lessee*) his executors and administrators shall and will from and after the day of next preceding the expiration of the term hereby granted and thenceforth to the expiration thereof permit and suffer the said (*lessor*) his heirs or assigns or the next succeeding tenant or tenants of the said premises to enter into and upon the said premises or any part or parts thereof and to do thereupon any acts which may be proper for the purposes of husbandry or for the then future

occupation or cultivation of the same premises as occasion may require and shall and will during such time as last aforesaid allow the said (*lessor*) his heirs or assigns or the next succeeding tenant or tenants of the said premises to spread upon the same or any part thereof all dung compost and manure then remaining unspread thereon *Provided always* that if any sum reserved by way of rent or any part thereof shall at any time or times during the term hereby granted be in arrear and unpaid for twenty days next after any of the days whereon the same is hereby made payable or if the said (*lessee*) his executors administrators or assigns shall commit a breach of any of the covenants conditions or agreements herein contained and on the part of the said (*lessee*) his executors administrators or assigns to be observed or performed other than such covenants conditions or agreements as relate merely to the cultivation of land or shall be declared bankrupt or become insolvent (*b*) then it shall be lawful for the said (*lessor*) his heirs or assigns to re-enter into and upon the said premises or any part thereof in the name of the whole and to have again and repossess the same premises as of the former estate of the said (*lessor*) his heirs or assigns and from thenceforth the said term hereby granted shall absolutely cease and determine *And* the said (*lessor*) *Doth hereby* for himself his heirs executors administrators and assigns covenant with the said (*lessee*) his executors administrators and assigns in mannner following (that is to say) That if the said (*lessee*) his executors administrators or assigns shall during the first five years of the said term lay out or expend any sum or sums of money in digging and making good and substantial drains not

No. CCCCXL.
Of a Farm.

Proviso for re-entry on breach of covenants, &c. (*a*).

Covenants by lessor.

To allow for money expended in draining.

(*a*) *Provided always* that no breach of any of the covenants provisoes and agreements herein contained (except the covenant for payment of rent) [*or any other covenant as may be agreed*] shall occasion any forfeiture of the said lease or of the term hereby granted or give any right of re-entry unless or until judgment shall have been obtained in an action for such breach of covenant nor unless the damages and costs to be recovered in such action shall have remained unpaid for the space of three calendar months after judgment shall have been obtained in such action. (See 5 & 6 Vict. c. 108, s. 1; 21 & 22 Vict. c. 44, s. 11.)

Qualification of power of entry.

(*b*) Or in case the said (*lessee*) shall be convicted of felony or shall become a bankrupt or shall take the benefit of any act or acts of Parliament now in force or hereafter to be passed for the relief of insolvent debtors or shall compound his debts or assign over his estate and effects for the payment thereof or in case any execution shall issue against him or his effects. (See 5 Vict. Sess. 2, c. 5, s. 1.)

- No. CCCCXI. less than eighteen inches deep to be made with stones or tiles in a workmanlike manner upon any part of the said premises and shall within six calendar months next after such drains shall have been so made give reasonable proof to the said (*lessor*) his heirs or assigns that any sum or sums has or have been so laid out and expended in making such drains then and so often as the same shall happen the said (*lessor*) his heirs or assigns shall and will thereupon pay or cause to be paid to the said (*lessee*) his executors administrators or assigns one moiety of the sum or sums so proved to have been so laid out and expended so that the said (*lessor*) his heirs or assigns be not called upon or required to pay any greater sum in the whole than one hundred pounds
- To provide sufficient materials for repairing the farm house and buildings.* And that the said (*lessor*) his heirs or assigns shall and will so often as the same shall be necessary during the said term within six weeks after a request in writing for that purpose given to him or them or left at his or their usual place of abode provide sufficient rough timber bricks or stones tiles lime iron and other materials for repairing the said messuage or farm house and all erections and buildings now being or which during the continuance of the said term shall be erected upon the premises to be delivered upon the said premises or within four miles thereof [*And also materials for repairing the fences, &c* , see *ante*, p. 1050]
- To pay for the green crops, grass, or hay on the premises at the end of the term at a valuation.* And that the said (*lessor*) his heirs or assigns shall and will pay or allow to the said (*lessee*) his executors administrators or assigns for all the green crops grass or hay growing or remaining upon the said premises at the end of the said term such sum of money as the same shall be then valued at by two indifferent persons the one to be chosen by or on the part of the said (*lessor*) his heirs or assigns and the other by or on the part of the said (*lessee*) his executors administrators or assigns or by a third person to be chosen by the two persons so to be first chosen in case they shall differ as to the value of such green crops grass or hay
- To allow lessee to use the barns and stack yards for last year's crops for six calendar months.* And that it shall be lawful for the said (*lessee*) his executors administrators and assigns to use and occupy the barns and stack yards upon or belonging to the said premises for the laying threshing and dressing his and their last year's crops for six calendar months next after the final expiration or other sooner determination upon notice in the manner herein mentioned of the said term with liberty of ingress egress and regress to and from the same doing as little damage as possible and making reasonable satisfaction for any damage which may in anywise happen to such barns and stack yards or to any part of

the said premises in consequence of such use and occupation No. CCCCXL.
And that the said (*lessee*) his executors administrators and *Of a Farm.*
 assigns paying the said rents hereby reserved in the manner For quiet en-
 herein appointed and performing all and every the covenants joyment.
 conditions and agreements herein contained and on his or their
 part to be observed and performed shall from time to time
 and at all times during the said term quietly hold and enjoy the
 said premises hereby demised with the appurtenances without
 any eviction interruption or disturbance by the said (*lessor*) or
 his heirs or any person or persons whomsoever lawfully or
 equitably claiming or to claim by through under or in trust for
 him them or any of them *And it is hereby agreed and declared*
 that if the said (*lessor*) his heirs or assigns shall be desirous of
 determining the said term at the expiration of the first seven or
 fourteen years thereof and shall deliver to the said (*lessee*) his
 executors administrators or assigns or leave at his or their usual
 place of abode not less than six calendar months' previous notice in
 writing of such desire then and in such case this present lease and
 everything herein contained shall immediately after the expira-
 tion of the time for that purpose mentioned in such notice cease
 and be absolutely void to all intents and purposes whatsoever
And also that if the said (*lessee*) his executors administrators or
 assigns shall be desirous of determining the said term at the ex-
 piration of the first seven or fourteen years thereof and shall
 deliver to the said (*lessor*) his heirs or assigns or leave at his or
 their usual place of abode not less than six calendar months' pre-
 vious notice in writing of such desire and shall previously pay
 or cause to be paid all arrears of rent and perform all and every
 the covenants herein contained and on the part of the said (*lessee*)
 his executors administrators or assigns to be performed then and
 in such case this present lease and everything herein contained
 shall immediately after the expiration of the time for that pur-
 pose mentioned in such notice cease and be absolutely void to all
 intents and purposes whatsoever *In witness &c.*

Proviso for de-
 termining the
 lease by lessor,
 at the end of
 the first seven
 or fourteen
 years, on notice
 in writing.

By lessee, on
 notice in writ-
 ing.

No. CCCCXLI.

Short Covenants in a Lease for Years (a).

And the said (*lessee*) Doth hereby for himself his heirs exe- To pay rent.
 cutors administrators and assigns covenant with the said (*lessor*)

No.
 CCCCXLI.

Short Covenants.

(a) See 8 & 9 Vict. c. 124, Sched.

No. CCCCXLI. <u>Short Covenants.</u>	
To pay taxes.	his heirs and assigns that he the said (<i>lessee</i>) his executors administrators and assigns will during the said term pay unto the said (<i>lessor</i>) the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever <i>And also</i> will pay all taxes rates duties and assessments whatsoever whether parochial parliamentary or otherwise now charged or hereafter to be charged upon the said demised premises or upon the said (<i>lessor</i>) on account thereof [excepting land tax and excepting also all taxes rates duties and assessments whatsoever or any portion thereof which the (<i>lessee</i>) is or may be by law exempted from] <i>And also</i> will during the said term well and sufficiently repair maintain pave empty cleanse amend and keep the said demised premises with the appurtenances in good and substantial repair together with all chimney pieces windows doors fastenings water closets cisterns partitions fixed presses shelves pipes pumps pales rails locks and keys and all other fixtures and things which at any time during the said term shall be erected and made when where and so often as need shall be <i>And also</i> that the said (<i>lessee</i>) his executors administrators and assigns will in every year in the said term paint all the outside
To repair.	woodwork and ironwork belonging to the said premises with two coats of proper oil colours in a workmanlike manner <i>And also</i> that the said (<i>lessee</i>) his executors administrators and assigns will in every year paint the inside wood iron and other works now or usually painted with two coats of proper oil colours in a workmanlike manner and also re-paper with paper of a quality as at present such parts of the premises as are now papered and also wash stop whiten or colour such parts of the said premises as are now plastered <i>And also</i> that the said (<i>lessee</i>) his executors administrators and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said (<i>lessor</i>) his executors administrators and assigns and the said (<i>lessee</i>) his executors administrators or assigns and keep the same so insured during the said term and will upon the request of the said (<i>lessor</i>) or his agent show the receipt for the last premium paid for such insurance for every current year and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sums or sum of money which shall be recovered or received by the said (<i>lessee</i>) his executors administrators or assigns for or in respect of such insurance shall be laid out and expended by him in building or
To paint outside every year.	
To paint and paper inside every year.	
To insure from fire in the joint names of the said lessor and the said lessee.	
To show receipts;	
and to rebuild in case of fire.	

repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid *And it is hereby agreed* that it shall be lawful for the said (*lessor*) and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon and to examine the condition of the said premises *And further* that all wants of repairation which upon such views shall be found and for the amendment of which notice in writing shall be left at the premises the said (*lessee*) his executors administrators and assigns will within three calendar months next after every such notice well and sufficiently repair and make good accordingly *And also* that the said (*lessee*) his executors administrators and assigns will not convert use or occupy the said premises or any part thereof into or as a shop warehouse or other place for carrying on any trade or business whatsoever or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling house without the consent in writing of the said (*lessor*) *And also* that the said (*lessee*) shall not nor will during the said term assign transfer or set over or otherwise by any act or deed procure the said premises or any of them to be assigned transferred or set over unto any person or persons whomsoever without the consent in writing of the said (*lessor*) his executors administrators or assigns first had and obtained *And further* that the said (*lessee*) will at the expiration or other sooner determination of the said term peaceably surrender and yield up unto the said (*lessor*) the said premises hereby demised with the appurtenances together with all buildings erections and fixtures now or hereafter to be built or erected thereon in good and substantial repair and condition in all respects reasonable wear and tear and damage by fire only excepted *Provided always* and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof) or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said (*lessee*) his executors administrators and assigns then and in either of such cases it shall be lawful for the said (*lessor*) at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again re-possess and enjoy as of his or their former estate anything hereinafter contained to the contrary notwithstanding

No.
CCCCXLI.
Short Covenants.

Power for
lessor to enter
and view state
of repair.

Lessee not to
use premises
as a shop.

Not to assign
without leave.

To leave pre-
mises in good
repair.

Proviso for re-
entry by the
said lessor on
non-payment
of rent or non-
performance of
covenants.

No.
CCCCXLI.
Short Covenants.
Covenant by
lessor for quiet
enjoyment.

And the said (*lessor*) Doth hereby for himself his heirs executors administrators and assigns covenant with the said (*lessee*) his executors administrators and assigns that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted without any interruption or disturbance from the said (*lessor*) his executors administrators or assigns or any other person or persons lawfully claiming by from or under him them or any of them *In witness &c.*



No.
CCCCXLII.

No. CCCCCXLII.

*Of Lunatic's
Estate.*

*Lease of Buildings and Land belonging to a Lunatic, with the
Licence of the Lord of a Manor as to the Copyholds.*

Recitals of in-
quisition of
lunacy.

Of grant to
committee.

Of lunatic
being seised in
fee, &c.

Approval of
lease by master
in lunacy.

This Indenture made the day of A.D. 18
Between A. B. of a lunatic of the first part C. D.
of the committee of the estate of the said A. B. of the
second part and (*lessee*) of of the third part *Whereas* by
an inquisition taken on the 18th day of February 184 under a
commission in the nature of a writ de lunatico inquirendo duly
issued for that purpose the said A. B. was found and declared
to be a person of unsound mind and not competent for the
management of himself or his property *And whereas* by letters
patent dated the day of 184 the custody of
the estate of the said A. B. was granted to the said C. D.
And whereas the said A. B. is seised of or absolutely
entitled to an estate of inheritance in fee simple in possession
to such part of the pieces or parcels of land and the cottages
shops stable and buildings standing and being thereon hereinafter
particularly described and intended to be hereby demised as are
of freehold tenure and the said A. B. is also seised to him and
his heirs according to the custom of the manor of in the
county of of such part of the said premises as is of copy-
hold tenure *And whereas* in pursuance of the general orders in
lunacy esquire one of the masters in lunacy by his report
made in this matter of the lunacy of the said A. B. and dated
the day of certified that he had settled and approved

of these presents the draft whereof had been laid before him and left in the office of the said masters in lunacy *And whereas* by an order made in the matter of the said lunacy and dated the day of 185 the said master's said report was confirmed *And* it was ordered that the said C. D. as the committee of the estate of the said lunatic should be at liberty to grant this present lease and that upon the masters in lunacy jointly or severally signing their or his allowance of these presents the said C. D. should as such committee as aforesaid and in the name and on behalf of the said A. B. execute the same upon the said (*lessee*) executing a counterpart thereof *And whereas* the said in pursuance of the said order hath signed his name in the margin of the first skin of these presents and his name and allowance in the margin of the second and last skin thereof *Now this Indenture witnesseth* That in pursuance of the hereinbefore recited order of the day of 185 and by virtue of the Lunacy Regulation Act 1853 *And also* in pursuance and by virtue of a licence for that purpose had and obtained from the lord of the said manor of to demise such part of the said premises as is of copyhold tenure *And* in consideration of the rent covenants conditions and agreements hereinafter reserved and contained and by and on the part of the said (*lessee*) his executors administrators and assigns to be paid kept done and performed the said A. B. acting by the said C. D. as such committee as aforesaid *Doth* by these presents grant demise lease set and to farm let unto the said (*lessee*) his executors administrators and assigns *All (the Parcels)* Together with all ways &c. *To have and to hold* the said unto the said (*lessee*) his executors administrators and assigns from the day of for and during and unto the full end and term of twenty-one years thence next ensuing and fully to be complete and ended Yielding and paying therefore yearly and every year during the said term the rent or sum of £ of lawful British money by even and equal quarterly payments on the days following (that is to say) the 25th day of March the 24th day of June the 29th day of September and the 25th day of December in every year without making any deductions or abatement out of the same or any part thereof the first of the said payments to begin and be made on the 25th day of December now next ensuing *And* the said (*lessee*) doth hereby for himself his heirs executors and administrators covenant promise and agree with and to the said A. B. his heirs and assigns

No.
CCCCXLII.
*Of Lunatic's
Estate.*

Confirmation
of master's
report.

Master's signature.

Testatum.

Habendum for
twenty-one
years.

Rent payable
quarterly.

Covenants by
lessee.

No. CCCCXLII. <i>Of Lunatic's Estate.</i>	in manner and form following (that is to say) That he the said (<i>lessee</i>) his executors administrators or assigns shall and will during the continuance of the term hereby granted well and truly pay or cause to be paid the said yearly rent of £
To pay rent.	hereinbefore reserved in the proportions and upon the respective days appointed for the payment thereof according to the true intent and meaning of these presents without any deduction or abatement thereout <i>And also</i> shall and will at all times hereafter during the said term pay and discharge the land tax sewers rate tithes or apportioned rent-charge in lieu thereof and quit rents if any payable in respect of the copyhold part of the said premises and all other taxes charges and assessments whatsoever which at the commencement of this demise or at any time afterwards during the said term are or shall be taxed charged or assessed upon the said buildings land and premises hereby demised or any part thereof or upon the landlord or proprietor in respect thereof or of any part thereof by authority of parliament or otherwise howsoever except income or property tax
To pay taxes, &c.	<i>And also</i> shall and will from time to time and at all times during the continuance of this demise at his or their own proper costs and charges keep the said cottages or tenements shops stable and other erections and buildings and all the walls hedges gates stiles posts pales rails ditches and fences in and about the said demised premises in good and substantial repair and condition <i>And also</i> well and sufficiently repair uphold support pave paint paper scour cleanse glaze empty amend and keep all and every the walls and fences pavements wydraughts glass glass windows and other the appurtenances belonging to the said cottages shops stable buildings and premises in by and with all needful and necessary reparations paintings cleansings scourings and amendments whatsoever when where and as often as occasion shall require <i>And also</i> shall and will once in every fourth year of the said term of twenty-one years hereby granted at his or their own costs and charges paint or tar or cause to be painted or tarred all the outside wood and iron work of or belonging to the said cottages shops stables buildings and premises with two coats of good and proper paint prepared with oil or with one coat of tar as the case may be in a workmanlike manner <i>And also</i> once in every seventh year of the said term paint all the inside wood and iron work of the said premises in like manner <i>And also</i> that it shall and may be lawful to and for the said A. B. his heirs and assigns and the said C. D. or other
To keep buildings, &c., in repair.	
To paint, &c.	
Power of entry to view condition of premises.	

the committee of the said estate of the said A. B. for the time being and their respective surveyors or agents with or without workmen or others in their or any of their company at any time during the continuance of this demise at all seasonable hours to enter and come into and upon the said demised premises or any part thereof there to view search and examine the state and condition thereof and of all defects defaults and wants of repair and amendments then and there found to give or leave notice or warning in writing at or upon the said demised premises to and for the said (*lessee*) his executors administrators or assigns to repair and amend the same within the space of three calendar months then next following within which said space or time of three calendar months after every or any such notice or warning shall be given or left as aforesaid he the said (*lessee*) his executors administrators or assigns shall and will well and sufficiently repair and amend the same accordingly *And also* shall and will at the end expiration or other sooner determination of the said term hereby granted peaceably and quietly leave surrender and yield up the said pieces or parcels of land cottages shops stables buildings and premises hereby demised and all the walls hedges gates stiles posts pales rails ditches drains and fences and all other things thereupon or thereunto belonging in all respects well and sufficiently repaired maintained upheld supported painted papered cleansed amended and kept according to the true intent and meaning of these presents together with all fixtures and things which now are or at any time during this demise shall be fixed or fastened in upon or about the buildings and premises hereby demised or any part thereof or any future erections to be made thereon whole undefaced and fit for use *And also* that he the said (*lessee*) his executors administrators or assigns shall and will immediately after the execution of these presents insure or cause to be insured all and singular the buildings hereby demised from or against loss or damage by fire in the Fire Insurance Office in London or in such other Insurance Office in London or Westminster as shall from time to time be directed by the said A. B. his heirs or assigns or the committee for the time being of his estate in the sum of £ at the least *And also* shall and will from time to time and at all times hereafter during the continuance of this demise keep the buildings so insured and when thereunto required by the said A. B. his heirs or assigns or the said C. D. or the committee of the estate of the said A. B. for the time being produce

No.
CCCCXLII.
*Of Lunatic's
Estate.*

To leave pre-
mises in good
repair at end
of term.

To insure
buildings
against fire.

No.
CCCCXLII.
*Of Lunatic's
Estate.*

Money re-
ceived on po-
licies to be
expended in
repairs.

Not to cut
down trees.

Power of entry
on non-pay-
ment of rent or

and show the policies to be taken from time to time and the receipts for the current premiums payable thereon *And* shall and will make due and regular payments of the premiums duty and charges which shall become due and payable in respect of every such insurance *And* in default thereof it shall be lawful for the said A. B. his heirs or assigns or the committee for the time being of his estate to make such payments and to recover the same by distress on the premises hereby demised in the same manner as for rent in arrear *And* it is hereby mutually agreed between and by the parties hereto that all and every the sums and sum of money which shall be paid by the proprietors or directors of any such insurance office as aforesaid by virtue of any policy or policies made of all or any part of the premises aforesaid shall with all convenient speed be expended for and towards the rebuilding reinstating or making fit for habitation and use the buildings hereby demised or such part thereof as shall be burnt down or damaged by fire *And* that if the sums or sum so paid be insufficient for that purpose or in case the said (*lessee*) his executors administrators or assigns shall neglect to make or continue such insurance as aforesaid then and in such case he or they shall make up and pay the deficiency or at his or their own costs and charges rebuild or cause to be substantially rebuilt reinstated and made fit for habitation and use the buildings hereby demised or such part thereof as shall be so burnt down or damaged by fire as aforesaid *And also* that he the said (*lessee*) his executors administrators and assigns shall and will keep the said pieces or parcels of land or such parts thereof whereon no erections or buildings are or shall be erected and built in a good and proper state of cultivation either as orchard or garden ground *And* that he and they will not cut down or destroy any of the fruit trees or any other trees now growing or which shall at any time or times during the term hereby granted grow on the said pieces or parcels of land (except such trees as shall be decayed or shall cease to be productive of fruit) but will carefully preserve the same (except as aforesaid) and cause the said fruit trees to be properly pruned at seasonable times of the year *And* that he or they will plant in the place or stead of every fruit tree which shall be decayed or become unproductive during the said term and which shall be cut down by him or them a thriving tree of proper growth of the same sort *Provided always* and these presents are on this express condition That if the said yearly rent or sum of

£ or any part thereof shall happen to be behind and unpaid by the space of twenty-one days next over or after any or either of the said days or times before mentioned and appointed for the payment thereof and the same shall be demanded upon or at any time after the last of the said twenty-one days and not paid when demanded or in case of breach of all or any of the covenants clauses and agreements hereinbefore contained on the part of the said (*lessee*) his executors administrators and assigns Then and in any of the said cases happening it shall and may be lawful to and for him the said A. B. his heirs or assigns or the committee for the time being of his estate the said premises or any part thereof in the name of the whole wholly to re-enter and to hold and enjoy the same premises and every part thereof as in his and their former estate and the said (*lessee*) his executors and administrators and all other tenants or occupiers of the said premises thereout and from thence utterly to expel put out and remove anything hereinbefore contained to the contrary thereof notwithstanding And the said A. B. acting by the said C. D. so far only as he is authorized by the aforesaid act of parliament and the said recited order of the day of 185 but not further or otherwise *Doth* hereby for himself his heirs executors and administrators covenant promise and agree with and to the said (*lessee*) his executors administrators and assigns that he the said (*lessee*) his executors administrators or assigns paying the said yearly rent of £ hereby reserved when and as the same shall become payable and observing performing fulfilling and keeping all and singular the covenants conditions and agreements hereinbefore contained on his and their part to be observed and kept according to the true intent and meaning of these presents shall and lawfully may peaceably and quietly have hold use occupy possess and enjoy the said pieces or parcels of land and premises hereby demised with their and every of their appurtenances for and during the said term of twenty-one years hereby granted without any lawful let suit trouble denial eviction or interruption of from or by the said A. B. his heirs or assigns or any other person or persons claiming or to claim by from under or in trust for him or them or any or either of them *In witness &c.* [See Form, No. CCVIII., *ante*, p. 429.]

No.
CCCCXLII.
*Of Lunatic's
Estate.*
on breach of
covenants.

Covenant by
lessor for quiet
enjoyment.



No.
CCCCXLIII.

By Mortgagor
and
Mortgagee.

No. CCCCXLIII.

Lease of an Inn, in which the Mortgagor joins.

Obs. As to leases by mortgagors and mortgagees, see *ante*, LEASES, Pref. sect. 11, p. 1020.

Demise.

This Indenture made &c. Between (*mortgagee*) of &c. common brewer who is also mortgagee of the capital messuage tenement or inn in fee and other hereditaments hereinafter described of the first part (*mortgagor*) of &c. of the second part and (*lessee*) of &c. of the third part *Witnesseth* That for and in consideration of the rents covenants conditions and agreements hereinafter reserved and contained and which on the part and behalf of the said (*L.*) his executors administrators and assigns are to be paid done and performed He the said (*mortgagee*) at the request and by the direction and appointment of the said (*mortgagor*) testified by his being a party to and executing these presents *doth* by these presents demise and lease and the said (*mortgagor*) *doth* by these presents demise lease and confirm unto the said (*L.*) his executors administrators and assigns *All that* capital messuage tenement or inn commonly known by the name or sign of the B. B. Inn with the houses outhouses tap-room coachhouses stables yards buildings gardens and appurtenances thereto belonging situate &c. together with all outhouses buildings barns stables yards gardens cellars ancient and other lights paths passages ways waters watercourses liberties privileges easements profits commodities emoluments hereditaments and appurtenances whatsoever to the said premises hereby demised belonging or in anywise appertaining *To have and to hold* the said capital messuage &c. unto the said (*L.*) his executors &c. for and during &c. determinable nevertheless by the said (*L.*) his executors &c. as hereinafter mentioned *Yielding and paying* therefore yearly during the said term the yearly rent of £ of lawful money of Great Britain unto the said (*mortgagee*) his heirs and assigns subject to such equity of redemption as the said premises are now liable to and subject also to the proviso or agreement hereinafter contained in respect to the intermediate payment of the said rent until notice as hereinafter mentioned such yearly rent of £ to be paid by quarterly payments on the twenty-fifth day of March the twenty-fourth day of June the twenty-ninth day of September and the twenty-fifth day of December clear of the sewers rates

and all and all manner of parliamentary parochial and other taxes assessments rates and impositions whatsoever now or hereafter to be charged assessed or imposed upon the said premises hereby demised or on the said yearly rent hereby reserved or on the said (*mortgagee*) and (*mortgagor*) or either of them their or either of their heirs executors administrators or assigns in respect thereof except the income tax (*a*) *Provided always* and it is hereby agreed and declared that in the meantime and until the said (*mortgagee*) his heirs executors administrators or assigns shall require to have the receipt of the rents and profits of the said premises hereby demised and shall give unto the said (*lessee*) his executors administrators or assigns or leave at the same premises notice in writing requiring the said (*lessee*) his executors administrators or assigns to pay the said rent hereby reserved to him the said (*mortgagee*) his heirs executors administrators or assigns the same rent shall or may be paid to the said (*mortgagor*) his heirs or assigns And if at any time previously to such notice having been given or left as aforesaid the same rent or any part thereof shall be unpaid for the space of twenty-one days after the respective days or times whereon the same ought to be paid as aforesaid then and in such case and so often as the same shall happen (although no lawful

No.
CCCCXLIII.
*By Mortgagor
and
Mortgagee.*

Proviso for
payment of
rent to mort-
gagor till notice
by mortgagee.

Power of dis-
tress to mort-
gagor.

(*a*) The reservation of rent to the mortgagee until payment of the principal money and interest, and then to the mortgagor, is inaccurate, because upon satisfaction of the mortgage the rent is merely an annuity in gross, being limited to a person who has not the legal estate, and not recoverable as rent. The proper course is to make the rent payable to the mortgagee, who has the reversion, or to reserve it generally during the term, and then the benefit of the reservation will pass with the estate to the mortgagor when he takes a conveyance from the mortgagee of the legal estate. See 5 Byth. Conv. by Sweet, p. 357. The above form is altered with the assistance of 2 Platt on Leases, pp. 686—688, so far as regards that part of the form. In the last edition of this work the rent was reserved as follows:—Yielding and paying therefore yearly and every year during such part of the continuance of the said term hereby granted as the said (*mortgagee*) shall continue mortgagee of the said demised premises for the principal sum of £ unto the said (*mortgagee*) his executors &c. the yearly rent or sum of £ being lawful interest at the rate of &c. upon and for his said mortgage debt by four quarterly payments at the times hereinafter more particularly mentioned for payment thereof And after payment of such interest due and to become due upon the said mortgage as aforesaid Then also yielding and paying unto the said (*mortgagor*) his heirs and assigns yearly and every year during the continuance of the said term hereby granted the further yearly rent or sum of £ of &c. making together the sum of £ both which said yearly rents or sums are to be paid on the four &c.

No.
CCCCXLIII.
By Mortgagor
and
Mortgagee.

Covenant by
lessee

to pay rent to
mortgagor till
notice, and
afterwards to
mortgagee.

To pay rates
and taxes; 4

and premiums
of insurance
effected by
mortgagee or
mortgagor.

Amount reco-
verable by
distress.

demand shall have been made thereof) it shall be lawful for the said (*mortgagor*) his heirs or assigns to enter into and distrain upon the said premises hereby demised for the said yearly rent or so much thereof as shall then be in arrear and the distress and distresses then and there made to take lead carry away and impound and in pound to detain and keep and in due time afterwards to sell and dispose of or otherwise to act therein according to the law to the intent that by the ways and means aforesaid he the said (*mortgagor*) his heirs and assigns shall and may be fully paid and satisfied the arrears of the said rent and also all costs charges and expenses which shall be sustained or incurred in consequence of any such distress or distresses And the said (*lessee*) doth hereby for himself his heirs executors administrators and assigns covenant with the said (*mortgagee*) his heirs and assigns and also separately with the said (*mortgagor*) his heirs and assigns in manner following (that is to say) That he the said (*lessee*) his executors administrators and assigns shall and will yearly during the continuance of the said term hereby granted pay unto the said (*mortgagor*) his executors administrators or assigns until such notice shall have been given or left as aforesaid and afterwards to the said (*mortgagee*) his heirs executors administrators and assigns the said yearly rent of £ on the respective days and in manner hereinbefore appointed for payment thereof without any deduction whatsoever And also shall and will pay the sewers rate and all manner of other taxes assessments rates and impositions whatsoever whether parliamentary parochial or otherwise which now are or hereafter during the said term shall be assessed rated or imposed on the said messuage or tenement and premises or any part thereof or on the said (*mortgagee*) and (*mortgagor*) or either of them their or either of their heirs executors administrators or assigns on account thereof And will also pay on demand unto the said (*mortgagee*) and (*mortgagor*) respectively and their respective heirs executors administrators and assigns all premiums costs charges and expenses and all and every sum and sums of money which the said (*mortgagee*) and (*mortgagor*) respectively or their respective executors administrators or assigns shall from time to time during the said term expend for insuring the said messuage or tenement and premises from loss or damage by fire to the extent of £ And that the amount of the said premiums costs charges and expenses shall also be recoverable by distress on the said premises as and in

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*By Mortgagor
and
Mortgagee.*

the nature of rent reserved upon a lease for years and also that in case any loss or damage by fire shall during the said term hereby granted happen to the said messuage or tenement and premises or any part thereof and the money received by the said (*mortgagee*) and (*mortgagor*) or either of them their or either of their heirs executors administrators or assigns under or by virtue of the policy or policies of insurance thereon shall not be sufficient and so far as the same will not extend to rebuild repair or reinstate the said messuage or tenement erections and buildings then the said (*lessee*) his executors administrators or assigns shall and will also pay unto such of them the said (*mortgagee*) and (*mortgagor*) his heirs executors administrators or assigns as shall rebuild repair and reinstate the messuage or tenement erections and buildings the difference in amount between the sum recovered under or by virtue of the said policy or policies of insurance and the sum expended in so rebuilding repairing and reinstating the said messuage or tenement erections buildings and premises or any part thereof *And also &c.* [*Covenant by Lessee to Repair, ante*, pp. 1058, 1062] *And further* that he the said (*L.*) his executors administrators or assigns shall and will at his and their own proper costs and charges wholly take down and remove the stables called &c. now standing and being in the back yard of and belonging to the said hereby demised premises and then forthwith erect and build on the sites thereof respectively one or more good and similar stable or stables of like or larger dimensions or description in a good substantial and workmanlike manner to the approbation of the said (*mortgagor*) his heirs executors administrators surveyors and assigns *And also* that he the said (*L.*) his executors administrators or assigns shall and will at his or their own costs within the first six years of the said term hereby granted take down and remove the dwelling house and buildings part of the said hereby demised premises now in the occupation of W. W. called &c. and then forthwith erect build and finish on the site thereof a good and sufficient dwelling house consisting of eight rooms in a good substantial and workmanlike manner upon being paid the sum of £ at the end of the first six years of the said term hereby granted by the said (*M.*) his heirs or assigns agreeably to his covenant hereinafter contained *And also* that he the said (*L.*) his executors administrators or assigns at his and their own like proper costs and charges from time to time shall and will well and sufficiently

To remove
buildings, &c.

To repair.

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and
Mortgagee.*

repair maintain and keep the said capital messuage or tenement &c. and all erections and buildings now or hereafter to be erected and set up thereon by him together with all alterations and improvements thereon and all the privies sinks drains gutters and all other the premises with their respective appurtenances hereby demised in by and with all and all manner of needful and necessary reparations paintings and amendments whatsoever as well outside as inside and the same and every part thereof being so well and sufficiently repaired shall and will at the end or sooner determination of this demise quietly and peaceably leave surrender and yield up unto the said (*mortgagee*) his heirs or assigns in case his said mortgage shall be then subsisting but otherwise to the said (*mor'gagor*) his heirs or assigns (casualties by fire and tempest excepted) *And further* that the said (*L.*) his executors administrators or assigns shall and will permit and suffer the said (*mortgagee*) and (*mortgagor*) and their respective heirs or assigns with or without workmen once in every year to enter into and upon the said demised premises or any part thereof to view search and see the state and condition of the repairs thereof and of all such decays and wants of repair as shall be then and there found to give or leave notice or warning in writing at the said demised premises to or for the said (*L.*) his executors administrators or assigns to repair and amend the same within three calendar months then next following within which said space of time of three calendar months he the said (*L.*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his heirs and assigns to repair and amend the same accordingly *And also* that he the said (*L.*) his executors administrators or assigns shall and will during the continuance of the said term hereby granted keep open and use the said capital messuage tenement or inn taproom coach houses stables and premises with the appurtenances as and for an inn for the reception accommodation and entertainment of travellers guests and other persons resorting thereto with horses cattle carriages or without *And also* shall and will from time to time annually at known times for the purpose apply for and use his best endeavours to obtain all such licences at his or their own expense as are or may be necessary for carrying on and keeping the same premises open as and for an inn as aforesaid *And* shall not nor will at any time during the said term hereby granted do or suffer to be done any act matter or thing whatsoever whereby or by means whereof any licence or licences

To permit
lessors to view
premises.

To use mes-
suage as an inn.

To obtain
licence.

so to be granted shall or may be forfeited or become void or liable to be taken away suppressed or suspended in any manner howsoever And further that he the said (L.) his executors administrators and assigns shall and will from time to time during the first seven years of the term hereby granted purchase and take of and from the said (*mortgagee*) and his executors administrators or assigns all such stout porter strong beer ale and table beer as shall be required bought had vended disposed and made use of in upon or about the aforesaid inn taproom and premises and shall not buy vend or dispose or make use of any other stout porter strong beer ale and table beer in upon and about the same premises than such as shall be bought of the said (*mortgagee*) his executors administrators or assigns during the term aforesaid if the said (*mortgagee*) his executors administrators or assigns do and shall serve and deliver in such stout porter strong beer ale and table beer at the same prices as to his or their other customers and of the like good quality but no longer or otherwise [*Proviso for re-entry of mortgagee, his heirs or assigns, and also of mortgagor, his heirs or assigns, on nonpayment of rent or breach of Covenants, see ante, pp. 1043, 1055*] [*A covenant by the mortgagee for the lessee's quiet enjoyment, on payment of rent, &c., as against the mortgagee and persons claiming under him*] And the said (*mortgagor*) for himself his heirs executors and administrators doth hereby covenant with the said (L.) his executors administrators and assigns in manner following (that is to say) That he the said (L.) his executors administrators and assigns paying the aforesaid yearly rent or sums of money hereinbefore mentioned at the times appointed for payment thereof and observing performing fulfilling and keeping all and singular the covenants clauses conditions and agreements hereinbefore contained and which on the tenant or lessee's part are and ought to be paid performed observed fulfilled and kept shall and may peaceably have and occupy the said capital &c. and all and singular other the premises hereby demised with their and every of their appurtenances for and during all the said term hereby granted determinable as hereinafter mentioned without the lawful let suit trouble denial molestation eviction ejection interruption or other disturbance whatsoever of the said (*mortgagee*) and (*mortgagor*) respectively or either of them their or either of their heirs executors administrators or assigns or of or by any other person or persons whomsoever lawfully claiming or to claim by

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By Mortgagor
and
Mortgagee.
To take beer,
&c., of lessor.

No.
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*By Mortgagor
and
Mortgagee.*

Determination
upon notice.

from or under them or any or either of them or by and through their or any or either of their acts means assent consent default neglect or procurement *And also* that he the said (*mortgagor*) shall and will well and truly pay or cause to be paid unto the said (*L.*) his executors administrators or assigns the sum of £ at the end of the first six years of the said term hereby granted in case the said (*L.*) his executors administrators or assigns shall have taken down the said dwelling house and buildings now in the occupation of W. W. and shall have erected built and finished on the site thereof one good and sufficient dwelling house consisting of eight rooms in a good substantial and workman-like manner agreeably to the covenant of the said (*L.*) for that purpose hereinbefore contained *And lastly* it is hereby covenanted and agreed by and between all the said parties hereto and it is the true intent and meaning of them and of these presents that if the said (*L.*) his executors administrators or assigns shall be minded and desirous to quit yield and give up the possession of the said capital messuage &c. hereby demised at the end of the first seven years of the said term hereby granted and shall give or leave full six months' previous notice in writing under his or their hand or hands of such his or their mind and intention unto or for the said (*mortgagor*) his heirs or assigns at his or their then place of abode then and immediately after the expiration of the said term of seven years this present indenture and the term and estate hereby created shall cease determine and become utterly void to all intents and purposes whatsoever anything herein contained to the contrary thereof in anywise notwithstanding *In witness &c.*



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Under a Power.

No. CCCCXLIV.

*Lease of a House and Grounds by Tenant for Life under
a Power.*

Obs. As to leases under powers, see *ante*, Pref. sect. 14; *ante*, p. 1022.

Power to de-
mise.

This Indenture made &c. Between (*Tenant for life*) of &c. of the one part and (*Lessee*) of &c. of the other part *Witnesseth* That the said (*T.*) in exercise and execution of the power or authority to (*Lessor*) for that purpose given and reserved in and by a certain indenture of settlement bearing date on or about the day of 1850 and made or expressed to be made

between (*the parties*) and of every other power or authority enabling him in this behalf and in consideration of the rents and covenants hereinafter reserved and contained and by and on the part of the said (*lessee*) his executors and administrators to be paid done and kept doth by this present indenture under the hand and seal of the said (*lessor*) and executed by him in the presence of two credible witnesses limit and appoint by way of demise or lease unto the said (*lessee*) his executors administrators and assigns *All that &c.* commonly called or known by the name of &c. with the barns stables outhouses yards gardens and appurtenances thereunto belonging *And also* all those several closes pieces or parcels of arable meadow or pasture land or ground adjoining or lying near or contiguous thereto and now held and enjoyed therewith *And also* the water corn-mill and stream belonging thereto All which said several lands are situate lying and being in &c. and contain &c. And all ways watercourses profits privileges liberties advantages emoluments rights members and appurtenances whatsoever to the said messuage or tenement or dwelling house buildings pieces or parcels of ground belonging or in anywise appertaining [*Except and always reserved* out of this demise unto the said (*lessor*) and his assigns during so long of the said term as he shall happen to live and after his decease unto the (*a*) person or persons who for the time being shall be entitled to the freehold and inheritance of the premises hereby demised in reversion expectant upon the determination of the term hereby granted all timber trees and other trees except the fruit trees for their fruit only and the pollards for their lops and tops only which now are or at any time during the continuance of this demise shall be standing growing or being upon the said premises or any part thereof with full liberty of ingress egress and regress to and for the said (*lessor*) and his assigns and after his decease for the person or persons entitled as aforesaid and his and their workmen and others with horses carts carriages or otherwise into the said demised premises or any part thereof to come and to fall and stack the said trees in and upon the said premises and to cleave cord hew square saw lay and place the same timber and trees and to make coal-pits and saw-pits for the sawing thereof and to get and take turves and

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Under a Power.
Demesne.

Exception.

Liberty of ingress, &c. ;

to fall trees, &c. ;

(*a*) As to the form of the exception and reservation to tenant for life under a power, see *ante*, Pref. sect. 26, p. 1025.

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to set other
trees;

to hunt, &c. ;

to dig mines ;

to plant on
certain parts
of the demised
premises.

make coal fires and hearths and do every other act and thing which shall be necessary and requisite for the charcoaling converting and working thereof and to take and carry away the same making reasonable satisfaction to the said (*lessee*) his executors and administrators for any damage which he the said (*lessee*) his executors &c. may sustain thereby in corn grain and mowing grass *And also and except and always reserved* out of this demise unto the said (*lessor*) and his assigns during his life and after his decease to such person or persons entitled as aforesaid his her their or any of their workmen or others during the continuance of this demise at all seasonable times in the year full and free liberty to come and be in and upon the said demised lands and premises and in the hedge-rows and fences thereof to set and plant such and so many young trees as he they or any of them shall from time to time think proper and to do every needful act to fence in and preserve the same *And also* free liberty to enter into and upon the same premises at all seasonable times in the day to view the condition thereof *And also except and always reserved* out of this demise or lease unto &c. all hares partridges pheasants birds and beasts of warren or chase which at any time during the continuance of this demise are or shall come be bred or found in or upon the said demised premises And all fish-ponds or fishing-places there with full and free liberty for the said (*lessor*) or his assigns and after his decease to such person or persons entitled as aforesaid his or their agents friends and followers to enter into and upon the said demised premises with horses dogs guns nets and other engines to hunt hawk and fowl and for the purpose of fishing to draw down or let dry any pits ponds or fishing-places making good any damage which the said (*lessee*) his executors administrators or assigns may sustain thereby *And also except and always reserved* out of &c. unto &c. all mines and minerals that are or shall or may be found in or upon the said demised premises with full power and liberty to search for dig get have take and carry away the same (see *ante*, p. 1046) *And also except and always reserved* out of &c. unto &c. upon giving months' previous notice in writing of such his or their intention unto the said (*lessee*) his executors administrators or assigns or leaving the same at his or their usual place of abode liberty to enter upon and take into his or their possession any part or parts of the demised lands as he or they shall think proper not exceeding in the whole acres for the purpose of planting young trees therein and thereon and fence in and inclose the same and to use and enjoy the said ex-

cepted premises in all respects as if this demise had not been made he the said (*lessor*) and his assigns during his life and after his decease such person or persons as aforesaid for the time being from the time or times of every such entry yearly and every year during the then remainder of this demise making an allowance or abatement unto the said (*lessee*) his executors administrators or assigns out of the rents hereby reserved the sum of £ for each acre and so in proportion for any less quantity than an acre as shall be so entered upon and taken for the purpose of planting as aforesaid] *To have and to hold* the said messuage tenement or dwelling house mill buildings pieces and parcels of land or ground and all and singular other the premises hereby demised or intended so to be with their and every of their appurtenances (except as hereinbefore excepted) unto the said (*lessee*) his executors administrators and assigns from &c. for and during the term of seven ("fourteen" or "twenty-one") years subject nevertheless to the provisoes conditions and agreements hereinafter contained *Yielding and paying* therefore yearly and every year during the said term hereby granted the yearly rent or sum of £ of lawful money of Great Britain unto the said (*lessor*) and his assigns and after his decease to such person or persons as aforesaid upon &c. (see *ante*, pp. 1047, 1048) the first payment &c. thereof to be made without any deduction *And also yielding and paying* unto the said (*lessor*) and his assigns during his life and after his decease to such person or persons as aforesaid over and above the yearly rent hereby reserved on or at the days and times and in the manner aforesaid during the continuance of this demise wherein the said (*lessee*) shall sow set or plant any flax hemp rape madder or potatoes the further yearly rent of £ for every acre and so in proportion for any less quantity than an acre which shall be so sown set or planted *And also yielding and paying* therefore &c. unto &c. over and above the said yearly and other rents hereinbefore reserved for every acre of the meadow or ancient mowing-ground hereby demised that he the said (*lessee*) his executors administrators or assigns shall dig plough break up or convert into tillage the further yearly rent of £ and so in proportion for any less quantity than an acre which shall be so ploughed up or converted into tillage such payment to be made on such of the said days or times of payment as shall next happen after such digging ploughing breaking up or converting the same into tillage and to continue

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Under a Power.

Habendum.

Term.

Reservations.

Additional rent
of £ for
every acre of
flax, &c., that
is sown.

Rent of £
for every acre
of meadow
ground broken
up.

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Under a Power.

Further rent
for having in
tillage more
than acres.

Covenants from
lessee.

payable until such time as the said lands shall be again converted into meadows *And also yielding and paying* unto the said (*lessor*) and his &c. or the &c. over and above the said yearly rents hereinbefore reserved yearly and every year after the first years of the said term hereby demised wherein the said (*lessee*) his executors or administrators shall dig plough break up and have in tillage more than the quantity of acres of the said demised lands and premises the further yearly sum of £ of like lawful money for each and every acre thereof exceeding the said quantity of acres that shall be so dug ploughed broke up or had in tillage as last mentioned and so in proportion for any greater or less quantity than an acre such last-mentioned payment to begin and be made on such of the said days or times of payment as shall next happen after such digging ploughing breaking up or having in tillage as aforesaid and to continue payable during the then residue of the said term *And the said (lessee) for himself his heirs executors and administrators doth hereby covenant with the said (lessor) and the person or persons entitled as aforesaid in manner following (that is to say) That he the said (lessee) his executors administrators and assigns shall and will during the continuance of the said term well and truly pay or cause to be paid unto the said (lessor) during his life and after his decease to such person or persons as aforesaid the said several rents hereinbefore reserved as the same shall respectively become due &c. And also shall &c. [Covenant to pay taxes, see ante, pp. 1048, 1058] And shall and will at his own costs and charges uphold sustain amend support repair scour clean paint glaze preserve and keep in good and substantial repair the said messuage or tenement and all and singular the outhouses barns stables cowsheds pigsties and fold-yard and all other edifices and buildings already erected or which shall during &c. be erected or built upon the said premises and the hedges mounds fences gates wickets stiles rails posts and pales now being or hereafter to be set planted and erected and made And all and every the same messuage &c. in such good sound and substantial order and repair together with the quiet and peaceable possession thereof at the expiration or other sooner determination of such term leave and deliver up unto the said (*lessor*) or to such person or persons as aforesaid *And also* that it shall and may be lawful for the said (*lessor*) and his assigns during his life and after his decease for such person or persons as aforesaid [*to enter and**

view repairs, see ante, pp. 1050, 1062] And also that he the said (*lessee*) his executors or administrators shall and will from time to time and at all times during the continuance of this demise use manage cultivate and employ all and every the aforesaid lands and premises in a good and husbandlike manner and in a due and regular course of husbandry and not wilfully or willingly waste destroy impoverish or make barren or suffer the same or any part or parts thereof to be wasted &c. or any of the timber or other trees which now are or shall or may hereafter during &c. be planted or growing upon the said demised premises or any part or parts thereof to be wasted destroyed impoverished or made barren by over-much tillage or otherwise and at all times shall and will do his and their best endeavours to preserve the same from waste spoil and destruction And also that he the said (*lessee*) his executors administrators and assigns shall and will from time to time during the continuance of this demise when and so often as the said hereby demised lands or any part thereof shall have gone through a regular and due course of tillage lay down the same in a husbandlike manner with the usual and sufficient quantity of clover or other grass seeds And also that he the said (*lessee*) his executors administrators and assigns shall &c. during &c. make summer fallow and sow with turnips all the clover leys that shall have been broken up and sown the preceding year with grain before another crop shall be taken therefrom And also in and upon the same lands and premises shall and will spend use lay and employ all the hay straw fodder dung soil muck manure and compost that shall and may from time to time arise come grow or be made in and upon the said premises And at the end of this demise shall and will leave upon some convenient part or parts of the said premises for the use of the said (*lessor*) or his assigns or of such person or persons as aforesaid all the hay straw fodder dung soil muck manure and compost except tons of hay which the said (*lessee*) his executors and administrators is and are to have liberty to carry away sell or otherwise dispose of And also that it shall and may be lawful for the said (*lessor*) and his assigns and after his decease for such person or persons as aforesaid and his or their agents or future tenants at next before the expiration or sooner determination of the said term to enter upon and plough up all such parts of the said demised lands as shall the preceding year have been sown with

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Under a Power.
To till lands in
a husbandlike
manner.

To lay down
with clover or
grass, &c.

To summer
fallow, &c.

To use manure,
&c.

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Under a Power.

winter corn or grain (a) And further that he the said (*lessee*) his &c. shall not &c. [*assign*, &c. see *ante*, pp. 1043, 1054] *Provided always* &c. [*proviso for re-entry on non-payment of rents*, &c. see *ante*, pp. 1043, 1055, 1059, 1064] *Provided also* and these presents are upon the express condition that if the said (*lessor*) and his assigns or such other person or persons as aforesaid or the said (*lessee*) his executors or administrators or any or either of them shall be minded or desirous to determine and make void this present demise or lease at the end of the first

years or years of the said term of years and shall signify such his or their intention to the other or either of them by notice in writing to be given or left at his or their last or most usual place or places of abode at least one year before the end of the said years or years That then and in such case from and after the end of the said years or years of the said term on payment and performance of all rents covenants and duties to be paid done and performed This indenture and every clause &c. herein contained shall cease determine and be utterly void to all intents and purposes whatsoever any thing herein contained to the contrary notwithstanding (b) And the

Covenants from
lessor.

To sign notices,
&c., against
trespassers;

and join in
actions.

(a) "And also that he the said (*lessee*) his executors administrators or assigns shall and will sign all such notices forewarning any person or persons from trespassing hunting shooting or sporting upon the said demised premises as he the said (*lessor*) and his assigns or such other person or persons as aforesaid and his or their agents shall think proper and that it shall and may be lawful for the said (*lessor*) and his assigns and after his decease for such person or persons as aforesaid to use the name or names of the said (*lessee*) his executors administrators or assigns in any action or actions which he or they shall think proper to commence sue or prosecute against any person or persons whomsoever for hunting coursing shooting or sporting upon the said demised premises or any part thereof He the said (*lessor*) and such person or persons as aforesaid indemnifying and saving harmless the said (*lessee*) his executors administrators or assigns from and against all costs charges and expenses which he or they shall or may be at or put unto for or by reason or on account of any such action being brought commenced or prosecuted in his or their name or names as aforesaid And that he the said (*lessee*) his executors administrators or assigns shall not nor will release or discharge any such action or actions which by the direction of the said (*lessor*) or his assigns or such person or persons as aforesaid shall be brought or commenced in the name or names of him the said (*lessee*) his executors administrators or assigns against such trespassers as aforesaid And further" &c. (*as above*).

(b) See other provisos of this kind, *ante*, p. 1057. If the tenant for life has previously covenanted to do substantial repairs, then add, "*Pro-*

said (*lessor*) for himself his heirs executors administrators and assigns doth hereby covenant with the said (*lessee*) his executors administrators and assigns in manner following [that is to say] That he the said (*lessor*) or his assigns during his lifetime or after his decease such person or persons as aforesaid shall and will provide for and allow unto the said (*lessee*) his executors administrators or assigns on the said demised premises or within miles' distance therefrom necessary rough timber on the stem brick tiles and lime for such repair of the said demised messuage and premises *And also* that for and notwithstanding the exception aforesaid or any clause or thing therein contained to the contrary it shall be lawful for the said (*lessee*) his executors administrators and assigns to cut and plash the hedges to the said demised premises and to lop such trees thereon as have been usually lopped (provided they be not less than nine years' growth) and to take the wood thereof from such hedges and fences to his and their own use *And also* [*Covenant for quiet enjoyment without the interruption &c. of tenant for life or such other person &c.*, see *ante*, pp. 1057, 1065] *In witness &c.*

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CCCCXLIV.
Under a Power.

To allow lessee
rough timber,
&c.

vided also and it is hereby declared and agreed by and between the said parties to these presents and particularly the said (*lessor*) doth hereby for himself and his assigns and such other person or persons as aforesaid covenant with the said (*lessee*) his executors administrators and assigns that in case the said (*lessor*) or his assigns or such other person or persons as aforesaid shall determine and make void this present demise or lease at the end of the first years or years of the said term of years pursuant to the proviso or agreement hereinbefore for that purpose contained Then he the said (*lessor*) or his assigns or such other person or persons as aforesaid shall and will from and immediately after the end or expiration of the first years or years of the said term of years well and truly pay or cause to be paid unto the said (*lessee*) his executors administrators or assigns any sum or sums of money not exceeding £ which the said (*lessee*) his executors &c. shall have actually laid out and expended during the said term of years such sum or sums of money to be settled by two indifferent persons one to be chosen by the said (*lessor*) or his assigns and after his decease by such person or persons as aforesaid and the other by the said (*lessee*) or his executors administrators or assigns or in case they cannot agree by a third person to be chosen by the said arbitrators."

No. CCCCXLV.

Lease by Tenants in Common.

No.
CCCCXLV.
*By Tenants in
Common.*

Obs. As to leases by tenants in common and joint-tenants, see *ante*, Pref. sect. 8, p. 1016.

Consideration.

Demise of each
moiety.

Covenants from
lessee.

This Indenture made &c. Between A. B. of &c. of the first part C. D. of &c. of the second part and E. F. of &c. of the third part (*a*) *Witnesseth* That for and in consideration of the rents covenants and agreements hereinafter reserved and contained and which by and on the part and behalf of the said E. F. his executors administrators and assigns are to be paid done and performed He the said A. B. as to one undivided moiety or half part the whole into two equal parts to be considered as divided of and in the messuage or tenement with the appurtenances hereinafter particularly mentioned and described and the said C. D. as to one undivided moiety or half part the whole into two equal half parts to be considered as divided of and in the same messuage or tenement with the appurtenances *Do* and each of them *Doth* (according to their several and respective shares and proportions aforesaid) by these presents grant demise and to farm let unto the said E. F. his executors administrators and assigns all that messuage &c. (*parcels*) *To have* &c. the said messuage &c. unto the said E. F. his &c. from the day of for &c. the term of years to commence from last *Yielding and paying* therefore during the said term unto the said A. B. his heirs and assigns the yearly rent or sum of £ of lawful money of Great Britain being one moiety or equal half part of the sum of £ and *Yielding and paying* therefore during the said term unto the said C. D. his heirs and assigns the yearly rent or sum of £ like money being the other or remaining moiety of the said sum of £ such several yearly rents to be respectively payable in equal portions on &c (*name the days*) and the first half-yearly payment thereof respectively to be made on the day of next (*b*) *And* the said (*lessee*) for himself his heirs executors

(*a*) A short recital of the instrument by which the lessors became entitled is sometimes advisable.

(*b*) As under a reservation of an entire rent to tenants in common, they have the option of bringing either joint or several actions, it should seem that this mode of reservation is preferable to that of reserving several rents to them, though the latter is the more usual mode, 5 Jarm. Conv. 95; 1 Platt

and administrators doth hereby covenant with the said A. B. and C. D. separately and their respective heirs and assigns in manner following (that is to say) That he the said E. F. his executors &c. shall and will during the said term hereby granted pay to each of them their and each of their respective heirs and assigns the said several yearly rents hereinbefore reserved &c. *And also shall &c. [Covenant to pay taxes and repair &c. and other usual Covenants, see other Precedents, ante, pp. 1040—1044, 1057—1059] And also that it shall be lawful for the said A. B. and C. D. or either of them their or either of their heirs &c. [to enter and view repairs, see ante, pp. 1050, 1062] And the said A. B. as to and concerning one undivided moiety or equal half part of and in the premises hereby demised and the acts deeds and defaults of himself and those claiming under him And the said C. D. as to and concerning one other undivided moiety or equal half part of and in the premises hereby demised and the acts deeds and defaults of himself and those claiming under him do hereby severally and respectively and for their several and respective heirs executors administrators and assigns covenant with the said E. F. his executors administrators and assigns That he the said E. F. his executors administrators or assigns paying the rents hereby reserved and performing the covenants hereinbefore mentioned and contained and which on the part of the lessee are or ought to be paid and performed shall peaceably and quietly hold &c. (see ante, pp. 1057, 1065) without the let suit denial molestation or interruption of the said A. B. or C. D. or either of them their or either of their heirs or assigns or any other person claiming or to claim by from or under him or them or any of them Provided always &c. that in case &c. it shall and may be lawful for them the said A. B. and C. D. or either &c. [to re-enter, see ante, pp. 1043, 1055, 1059, 1064] In witness &c.*

No.
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*By Tenants in
Common.*

Covenant from
A. B. and C. D.
for quiet en-
joyment.

Proviso for re-
entry.

on Leases, pp. 131—136. The following is the form :—*Yielding and paying* therefore yearly and every year during the said term hereby granted the yearly rent of £ &c. by equal half-yearly payments on &c. clear of all taxes &c. Where the reservation is general, the covenants of the lessee will be with the tenants in common, their heirs and assigns. The power of re-entry for breach of covenants will be reserved “to the lessors respectively, according to their respective shares and proportions, and their respective heirs and assigns.” See 5 Jarm. Conv. p. 100; Prideaux’s Conv. pp. 431—435, 3rd ed.

No.
CCCCXLVI.

No. CCCCXLVI.

Building Lease. *Building Lease. (Variations where it is a Repairing Lease.)*
(See ante, No. LXVI., p. 108, *Agreement for a Building Lease.*)

Demise. *This Indenture made &c. Between (Lessor) of &c. of the one part and (Lessee) of &c. of the other part Witnesseth (a) That the said (lessor) in consideration of the rents and covenants herein-after reserved and contained and on the part of the said (lessee) his executors administrators and assigns to be paid done and performed Doth by these presents demise and lease unto the said (lessee) his executors administrators and assigns Firstly (b) All that piece or parcel of ground &c. Secondly All that &c. Thirdly All that &c. [describing each parcel separately] all which pieces or parcels of ground are situated in and are part and parcel of the estate of the said (lessor) and were heretofore part of the possession of and are exempt from all tithes and also from the land-tax which has been redeemed and which said several pieces or parcels of ground are as to their respective contents dimensions abutments and boundaries thereof more particularly delineated and described in the map or plan written or drawn on the margin of these presents together with all and singular the messuages or tenements and all erections and buildings to be erected and built thereon and all cellars sollers vaults lights easements ways paths passages waters watercourses profits commodities and appurtenances whatsoever to the said pieces or parcels of ground messuages tenements or building belonging or which shall belong to the said hereby demised*

Parcels.

General words.

(a) For variations, where it is a lease under a power, see ante, *Lease under a Power*, pp. 1072—1079.

(b) If, instead of a building lease, it be a repairing lease, say, “In consideration of the rents and covenants hereinafter reserved on the part of the said (lessee) his executors &c. to be paid done and performed And also for and in consideration of the costs charges and expenses which he the said (lessee) hath been at or expended [or ‘hath hereinafter covenanted and agreed to be at and expend,’ as the case may be] in or about repairing and putting into substantial repair the premises hereinafter described He the said (lessor) doth demise &c. All that brick messuage or tenement and dwelling-house together with all outhouses cellars &c. to the said messuages &c. belonging &c. To have &c. the said messuage &c.”

premises or any part thereof (a) *To have and to hold* the said pieces or parcels of ground &c. hereby demised or intended so to be with their and every of their appurtenances unto the said (*lessee*) his &c. from the &c. last past for and during &c. thence next ensuing fully to be complete and ended *Yielding and paying* (b) therefore for the first _____ years of the said term the rent of a peppercorn if demanded *And also Yielding and paying* yearly and every year for and during the remaining years of the said term hereby demised unto the said (*lessor*) his heirs and assigns the yearly rent or sum of £ _____ upon each (c) of the separate and several pieces or parcels of ground hereby demised or intended so to be by even and equal half-yearly payments on the _____ and the _____ in each year the first payment to be made &c. the said several rents to be paid and payable from time to time free and clear of all rates taxes charges assessments and payments whatsoever taxed charged assessed or imposed upon the demised premises or any part thereof by authority of parliament or otherwise howsoever *Provided always* (d) and it is hereby expressly declared and agreed that all and every such sum or sums of money as shall accrue and be due and payable by virtue of the reservation lastly hereinbefore contained shall be charged and chargeable only on each particular piece or parcel of ground with the messuage or dwelling house thereon in respect of which it is hereby reserved and not upon the other or others of the said pieces or parcels of _____ respectively with their respective messuages or tenements and dwelling houses *And* the said (*lessee*) for himself &c. [*covenant* (e) *to pay the said several rents &c.* (f)] *And also* [*to pay*

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Building Lease.
Habendum.
Term.
Reddendum for
the first years.

For remainder
of term.

Free of all
taxes, &c.

Apportionment
of rent by
lessor.

Covenants from
lessee to pay
rent, &c.

(a) If there be any exception, add, ("save and except only out of this demise such of the said ways paths passages and watercourses as shall be stopped up &c. according to the general plan of the buildings to be erected" &c.)

(b) If it be a repairing lease, instead of this reservation take usual reservation, see *ante*, *General Precedent*.

(c) If, as is most usual, the reservation is to be one entire rent, say, "*Yielding and paying* for the same pieces &c. of land yearly &c. unto the said &c. the rent or sum of £ _____ free &c. to be paid and payable by even" &c. The reservations in the text are framed with a view of making the lessee, and consequently his sub-lessees, liable for no more than the sum charged on each parcel of land.

(d) If it be a repairing lease, omit this proviso for apportionment.

(e) If it be a repairing lease, insert the common covenant to pay rent, see *ante*, *General Precedent*.

(f) Or, if it be one entire rent, then follow the *General Precedent*.

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Building Lease.

To make a road.

To pay towards
lighting and
watching, &c.,

and repairing
drains.

the taxes &c. see General Precedent] which now are or at any time during the said term shall be taxed charged assessed and imposed upon the said demised premises or any part thereof respectively or upon the messuages or tenements and buildings which at any time hereafter may be erected thereon of and from all which said taxes assessments duties charges and impositions he the said (*lessee*) his &c. shall and will save harmless and keep indemnified the said (*lessor*) his heirs and assigns *And also (a)* that he the said (*lessee*) his executors administrators and assigns shall and will at his and their own costs and expense within one year from the date hereof make and form such and so much of the road called or intended to be called so far as any of the pieces or parcels of ground and premises hereby demised abut on the said road the carriage way of such road to be made with hard brick rubbish twelve inches thick at the least with a coat of good screened gravel over the same nine inches thick at the least *And also* at all times during the said term upon demand pay a proportionate part towards the expense of watching lighting and repairing all other roads ways footpaths and streets wherein or whereabouts the said hereby demised premises or any or either of them or any part thereof are situated and for making renewing and repairing the drains sewers sinks privies grates and other watercourses now or at any time to be used in common by any tenant or tenants occupier or occupiers of any other messuages or tenements adjoining or near thereto such

(a) If it be a repairing lease, and the money is to be expended in repairs, omit the covenant for making the road, &c. and say, "*And also* that he &c. the said (*lessee*) his &c. shall and will at his and their own costs before the end of the first year from the commencement of this demise put the premises hereby demised into good and substantial repair and lay out and expend therein or in substantial improvements the sum of £ at the least *And* shall and will within six calendar months next after the said premises shall be so repaired or improved render to the said (*lessor*) his heirs and assigns or to their surveyor or agent the several bills documents or other evidence requisite to prove to his or their satisfaction that the aforesaid sum at least hath been so expended and thereupon the said (*lessee*) his executors administrators or assigns shall be entitled to a certificate that the same sum hath been duly expended as aforesaid *And also* shall &c. during &c. at his &c. keep the same premises in substantial repair and condition *And also* well and sufficiently repair uphold support pave scour cleanse glaze empty amend and keep all and every the party and other walls and fences pavements wydraughts grates sinks privies drains and watercourses thereunto belonging in by and with all and all manner of needful reparations cleansings and amendments whatsoever."

new drains and watercourses to be made under the inspection of the surveyor of the said (*lessor*) his heirs or assigns and the proportionate part to be calculated or ascertained according to the relative value or relative amounts of the improved or rack-rents of such messuages or tenements as aforesaid *And also* that he the said (*lessee*) his executors administrators and assigns shall and will within the space of one year from the date hereof fence in and inclose all such part and parts of the said several pieces and parcels of ground hereby demised fronting as aforesaid as are not already inclosed with a brick wall feet in height at least with proportionate footings and piers *And also* that he the said (*lessee*) his executors administrators and assigns shall within the space of years from the date hereof build upon each of the said pieces or parcels of ground a detached or coupled messuage or dwelling house with the necessary coach house stabling and outbuildings thereto the same to be built with good and sufficient materials of every sort and description and in a workmanlike manner according to the ground plan or elevation also drawn on the margin hereof *And also* shall and will from time to time from and after the messuages tenements buildings and erections on the said hereby demised pieces or parcels of ground shall be respectively completed and finished during the remainder of the said term hereby granted when where and as often as need shall require at his and their own costs and charges well and sufficiently repair &c. the said messuages or tenements erections and buildings and all the party and other walls rails lights pavements grates sinks privies drains and watercourses thereunto belonging or which shall belong to the same in by and with all and all manner of needful reparations cleansings and amendments whatsoever [*as to other covenants, if it be a repairing lease, follow the General Precedent*] [*And also* shall and will once in every three years of the said term paint or cause to be painted the outside wood and iron work of or belonging to the several messuages tenements or buildings already erected or which shall or may hereafter be erected or built upon the said hereby demised pieces or parcels of ground with good and proper oil colours and in a workmanlike manner or so much thereof as is usually painted *And* once every years of the said term colour or stucco respectively the surfaces of such of the messuages tenements or buildings so erected or hereafter to be erected as aforesaid or so much thereof as is usually coloured or stuccoed *And* once at least every

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Building Lease.

To wall in demised premises.

To build messuages on the pieces of ground, &c.

To repair and keep messuages, &c., in repair.

To paint, &c.

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Building Lease.

Lessor to enter
and view.

Lessee to re-
pair after
notice.

To deliver up
premises.

To make in-
ventories, &c.

Not to permit
noxious trades,
&c.

years during the said term paint the inside wood and iron work of the several messuages &c. with good and proper oil colour in a workmanlike manner or so much thereof as is or ought to be painted] *And also* that it shall be lawful for &c. [*lessor to enter and view* &c. see *ante*, pp. 1042, 1050, 1059, 1062] and of such defects decays and want of repairs there found to give and leave notice in writing at the said demised premises respectively *And* that the said (*lessee*) his executors administrators and assigns shall and will within three months next after every such notice so given or left as aforesaid well and sufficiently repair every such defect or want of reparations mentioned in the said notice *And also* that the said (*lessee*) his executors administrators or assigns shall and will peaceably and quietly leave surrender and yield up unto the said (*lessor*) his heirs and assigns the said demised premises in good order and condition being in all things repaired maintained paved emptied amended and kept as aforesaid at the end or other sooner determination of the said term together with all doors windows chimney pieces fastenings waterclosets cisterns, partitions presses shelves pipes pumps pales rails locks and keys and all other things which within the last seven years of the said term shall be fixed or fastened to the said demised premises or any part thereof *And also* that it shall be lawful for the said (*lessor*) his heirs or assigns or his or their stewards or agents at all reasonable times during the last seven years of the said term to enter in and upon the said demised premises or any part thereof and there to take a schedule or inventory of the fixtures and things thereupon which are to be left at the end of the said term to and for the use of the said (*lessor*) his heirs and assigns pursuant to the covenant hereinbefore contained in that behalf *And further* that he the said (*lessee*) his executors administrators or assigns shall not nor will during the said term hereby granted permit or suffer any person or persons to use exercise or carry on in and upon the said hereby demised premises or any part thereof any trade or business whatsoever or suffer the same to be used for any shop or shops or for a licensed madhouse a distillery brewery or manufactory of any kind whatsoever *And also* shall not nor will make or do or permit or suffer to be made or done any act matter or thing in or upon any or either of the said pieces or parcels of ground and premises hereby demised or any part thereof which shall or may be become or grow to the grievance disturbance damage or annoyance of the said (*lessor*) his heirs and assigns or of any of the

tenants of the said (*lessor*) adjoining thereto *And also* that the said (*lessee*) his executors administrators and assigns shall and will at his and their own proper costs from time to time and at all times during the continuance of this demise well and sufficiently ensure all and every the messuages or tenements erections and buildings which shall or may hereafter be built upon the said hereby demised premises and keep the same insured from casualties by fire in some or one of the public offices kept for that purpose in London or Westminster *And also* shall and will at all times whensoever requested by the said (*lessor*) his heirs or assigns produce and show forth the receipt for the premium for such insurance for the then current year And in case the said messuage &c. or any of them shall at any time or times during &c. be burnt down destroyed or damaged by fire shall and will when and as often as the same shall happen immediately after rebuild or well and sufficiently repair the same *Provided always* and it is hereby expressly declared and agreed by and between the said parties hereto that if the said yearly rents (*a*) or sums of £ any or either of them hereinbefore reserved or any part thereof shall be behind and unpaid by the space of days next after either of the said days of payment whereon the same ought to be paid as aforesaid (being lawfully demanded) or if the said (*lessee*) his executors administrators or assigns shall not well and truly observe perform fulfil and keep all and every the covenants articles clauses conditions and agreements in these presents expressed and contained on his and their part and behalf to be performed and kept according to the true intent and meaning thereof Then and in either of such cases it shall and may be lawful for the said (*lessor*) his heirs and assigns into such and so many of the said pieces or parcels of ground hereinbefore separately described and intended to be hereby demised together with the messuage or tenement messuages or tenements and buildings erected thereon whereof or whereon such neglect omission or default shall respectively happen or extend wholly to re-enter and the same and every part thereof thenceforth to have again retain repossess and enjoy in their or his former estate and him the said (*lessee*) his executors administrators or assigns and all others the occupier or occupiers thereof to put out any thing herein contained to the

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Building Lease.
To insure and
keep insured.

Clause of re-
entry.

(*a*) If one entire rent be reserved, the clause of re-entry may be in the common form, see *ante*, *General Precedent*.

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Building Lease.

Covenants from
lessor.

To produce his
title.

contrary thereof in anywise notwithstanding *And further* that the residue of the said pieces or parcels of ground messuages or tenements &c. whereon no such neglect omission or default shall happen shall be absolutely exonerated and discharged from all such forfeiture or re-entry as aforesaid *And* the said (*lessor*) for himself his heirs executors administrators and assigns doth hereby covenant with the said (*lessee*) his executors administrators and assigns [That he the said (*lessor*) his heirs and assigns shall and will at all times hereafter during the said term upon the reasonable request and at the cost and charges in all things of the said (*lessee*) his executors administrators or assigns produce his title to lease the said pieces or parcels of ground in any court of law or equity or otherwise] *And further* that he the said (*lessee*) his &c. paying (*a*) the said several rents hereby reserved in manner and form aforesaid and observing performing and keeping all and singular the said several covenants hereinbefore reserved and contained &c. shall &c. quietly &c. hold &c. the said several pieces and parcels of land hereby severally and respectively demised with their and every of their appurtenances for and during the said term of years hereby granted without any lawful let trouble &c. (*b*) *In witness &c.*

(*a*) If one entire rent, "paying the said rent and observing &c. the covenants hereinbefore &c. shall &c. quietly hold the said pieces and parcels of land hereby demised."

Covenant by
lessor to join
in underleases
and in order to
apportion the
rent.

(*b*) Where the rent and covenants are entire, the following covenant may be added in order to exonerate the sub-lessees from all charges, except those which affect their respective pieces of land:—"And the said (*lessor*) doth hereby for himself his heirs executors administrators and assigns covenant with the said (*lessee*) his executors administrators or assigns that in case the said (*lessee*) his executors administrators or assigns shall at any time or times during the said term hereby granted underlet or assign any messuage or tenement messuages or tenements or other erections and buildings which he or they shall erect or build upon the said piece or parcel of ground hereby demised or any part or parts thereof then and in such case he the said (*lessor*) his heirs or assigns shall and will at any time or times after the said messuage or tenement messuages or tenements erections or buildings which shall be so underlet or assigned shall be completely finished and made fit for habitation at the request costs and charges of the said (*lessee*) his executors administrators or assigns join and concur in any such underlease or assignment underleases or assignments so to be made as aforesaid for the purpose of ascertaining the proportion of the said yearly rent hereby reserved which each such undertenant or assignee and the premises so underlet or assigned to him shall be thenceforth subject or liable to pay (such proportion of the rent to be ascertained by the architect or surveyor for the time being of the said (*lessor*) his

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No.
CCCCXLVII.
Mines.

Lease of Coal Mines and Clay Pits by a Person seised in Right of his Wife. (Variations where they are Mines of Ore.)

Obs. 1. As to leases by husband and wife, see *ante*, LEASES, Pref. sect. 3, p. 1013; and as to the necessity of an acknowledgment of this deed by the wife, see DISENTAILING DEEDS, Pref. sect. 7, p. 914.

2. Where there are mines open, and mines not open, the lessee of the lands cannot, in the absence of express stipulation, open new mines, Plowd. 337; *Astry v. Ballard*, 2 Mod. 193. The queen, by her prerogative, is entitled to all mines of gold and silver, Plowd. 315 *b*; and before the 1 Will. & Mary, c. 30, and 5 & 6 Will. & Mary, c. 6, if a mine belonging to a subject contained gold and silver mixed with baser metals, the whole belonged to the queen, Plowd. *Case of Mines, ub. sup.* But by those acts no mines of copper, tin, iron or lead are to be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities, but a right of pre-emption is reserved to the Crown with respect to copper, iron and lead, and to tin found in other places than in the counties of Devon and Cornwall. The rule of pre-emption was fixed by the stat. 5 Will. & Mary, c. 6, s. 3, and has been altered by stat. 55 Geo. 3, c. 134. See Bainbridge on Mines, pp. 46—54, 2nd ed.; 1 Bl. Com. 294.

3. In regard to mines of ore, it is usual to make a reservation of a certain quantity of the ore, which is held to be analogous to money, and will go to the remainderman instead of the general heirs of the

heirs or assigns) and for the purpose of exonerating the same and each such undertenant or assignee of the premises so to be underlet or assigned to him of and from the remaining part of the said yearly rent of £ hereby reserved and made payable but so and in such manner that the said (*lessor*) his heirs or assigns shall not thereby release prejudice or affect the said remaining part of the same rent in respect to the remaining parts of the said hereby demised premises *And also* for the purpose of covenanting and declaring that such undertenant and assignee and the premises so to be underlet or assigned to him shall be thenceforth subject to the covenants provisoes and agreements hereinbefore contained so far only as such covenants provisoes and agreements are or shall be respectively applicable to or shall concern the premises which shall be so underlet or assigned as aforesaid *Provided always* that each such underlease and assignment shall contain and reserve unto the said (*lessor*) his heirs or assigns a similar proviso for re-entry as is hereinbefore contained so far as regards the rent and covenants to which such underlessee or assignee or the premises so to be underlet or assigned is or are to be or continue liable as aforesaid. See 4 Byth. Conv. by Sweet, p. 597.

Power of re-entry to be reserved to lessor in underlease or assignment.

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Mines.

lessor, tenant for life, where it is a lease under a power, *Bassett v. Bassett*, cited in *Campbell v. Leach*, Ambl. 748. The word "rent" in powers of leasing is construed to mean not only money, but any return or equivalent adapted to the nature of the subject demised; therefore upon a lease of mines a due proportion of the produce may be reserved as a render in lieu of money, although the power requires "a rent" generally to be reserved, *Ib.*, 2 Sugd. on Pow., p. 401, 7th ed.

Demise.

Parcels.

This Indenture made &c. Between (lessor) of &c. and M. his wife which said M. is the daughter of N. P. late of &c. and also a devisee named in the last will and testament of C. D. of &c. of the one part and (lessee) of &c. of the other part *Witnesseth* That in consideration of the several rents royalties covenants and provisions hereinafter reserved and contained and on the part of the said (lessee) his executors administrators or assigns to be paid observed and performed He the said (lessor) and M. his wife *Do* and each of them *Doth* by these presents grant and demise unto the said (lessee) his executors administrators and assigns *All those* (a) coal mines coal pits clay pits collieries seams and veins of coal as well open (b) as not open which can shall or may be wrought dug found out or discovered within upon or under all or any of the demesne waste wood or common lands part of or belonging to the manor (c) of the said (lessor) and M. his wife And which said lands are hereinafter more fully mentioned and described (that is to say) (parcels) *And also* all and every the whimseys gins engines and other machinery and fixtures now being in and about the said coal

(a) If the lands be demised as well as the mines, say, "*All those* several closes pieces or parcels of land &c. And also all and every the mines &c." (*as above.*) If the lease be of mines of ore, say, "All and all manner of mines pits and veins of lead tin copper metal minerals and other ores whatsoever as well &c." (*as above.*)

(b) As to mines not open, see *Obs.* 3.

(c) A custom is invalid which authorizes the lord of a manor to work mines under any messuages or buildings without making any compensation for the damage occasioned to them, but only for the user of the surface, *Hilton v. Earl Granville*, 5 Q. B. 701; Cr. & Phill. 294; 4 Beav. 130. The lord of a manor as such has no right without a custom to enter upon the copyholds within his manor under which there are mines and veins of coal, in order to bore and work the same, and the copyholder may maintain an action of trespass against him for so doing, *Bourne v. Taylor*, 10 East, 189. And a copyholder of inheritance cannot without a special custom dig for mines, neither can the lord dig in the copyholder's lands, on account of the great prejudice he would do to the copyhold estate, Gilb. Ten. 425, 5th ed. See Shelford on Copyholds, pp. 180—194; Bainbridge on Mines, pp. 11—22, 2nd ed.

mines and premises and specified in the schedule hereunder written or hereunto annexed Together (a) with full and free liberty license and authority to and for the said (*lessee*) his executors administrators and assigns and his and their agents servants miners and workmen to dig sink drive wirework and make greaves shafts drifts trenches sluices waygates watergates and watercourses for winning working getting raising and procuring all the said mines of coal and brick clay *And also* with full liberty power and authority to make bricks and tiles from and with the clay to be dug or gotten from the said clay pits *And also* to make sufficient and convenient pit room ground room weal room and keep room in and upon the said lands hereinbefore described or any part or parts thereof for the standing laying and placing as well of all the coals which shall be gotten from the said mines as also of all such cinders stones gravel clay and other rubbish which shall proceed from the said coal mines and clay pits in the digging and working thereof *And also* with full and free liberty &c. to erect and set up upon all or any of the said lands hereinbefore described or any part or parts thereof such mills or engines houses stables hoods hovels lodges sheds and bridges as shall be needful and convenient for the drawing and carrying away water from the collieries and all the coal and brick to be gotten and wrought out of the said mines quarries and clay pits or for the standing laying or placing of the workmen work houses and work gear to be used in working the said collieries or clay pits *And also* with sufficient liberty of passage and leave to make railways waggon or other roads in and over the said demesne &c. lands and to perform all other acts and things necessary for carrying away the coals or produce of the said mines or pits to the canal or other places of delivery And generally to have and enjoy during the continuance of the term hereby granted all other liberties and privileges whatsoever within over and upon the said premises which shall be necessary and convenient for the winning working digging getting or drawing the coals and clay out of or from the said mines or clay pits and taking loading and carrying away the same and making and burning bricks and

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Mines.

Power for
lessee to enter
and dig, &c.

To erect mills,
&c.

(a) If it be a lease of ore mines, say, "Together with full liberty &c. to and for &c. to erect build and set up any engines furnaces forges mills workshops and other erections and buildings for making and converting the tin or other ores &c. to make drains buddles and bungsteads for washing dressing and cleansing the same and for other necessary purposes relating thereto."

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Mines.

Exceptions.

tiles as aforesaid he the said (*lessee*) his &c. doing as little spoil and damage of ground as possible in the working of the said coal and clay pits [*Save and except* and always reserved out of the present demise unto the said (*lessor*) and M. his wife and her heirs and assigns all such other seams &c. the strata veins and mines of ironstone and all other mines minerals fire clay stone and earth of what nature and kind soever not being part and parcel of the said mines of coal and brick clay intended to be hereby demised *And also* full and free liberty of ingress egress and regress to and for the said (*lessor*) and M. his wife her heirs and assigns to and from the excepted mines And to and for his her or their servants miners workmen and agents to work and dig break up get carry away convert sell and dispose of all the said excepted mines minerals ironstone fire clay earth and other thing hereby excepted at his her or their or any of their free will and pleasure and for that purpose to make use and deepen all or any of the pits or shafts which shall or may have been made or sunken by the said (*lessee*) his executors administrators or assigns on any of the lands and premises when he the said (*lessee*) his executors administrators or assigns shall have worked out such pits and done using such shafts *And also* full and free liberty for him her or them to sink and make other shafts and pits in and upon the said demised premises and to erect and build and construct all such erections furnaces kilns work houses machines and conveniences as the said (*lessor*) and M. his wife or her heirs and assigns may think necessary for any of the purposes aforesaid but nevertheless so as that the said (*lessor*) and M. his wife her heirs or assigns shall not by such last-mentioned works interfere with hinder or obstruct the said (*lessee*) his executors administrators or assigns in the enjoyment of the premises hereby demised *And also* making and allowing for the brick curbs timber and manure left thereon as also for the coal that shall be left by the said (*lessee*) his executors administrators or assigns for the support and preservation of the shafts for the use of the said (*lessor*) as aforesaid a fair and reasonable compensation and satisfaction to be ascertained settled and allowed by referees (in case the parties cannot themselves agree upon the amount of the same in manner hereinafter expressed)] *To have and to hold* (if the lands are also demised say “*To have and to hold* the said closes pieces and parcels of ground &c. and also the said mines &c.”) all the said mines of coal brick and clay and all and singular &c. other the premises hereby granted and demised with their appurtenances

Habendum.

(except as before excepted) unto the said (*lessee*) his executors administrators and assigns from the day of now last past for and during and unto the full end and term of years thence next ensuing and fully to be complete and ended (determinable nevertheless as hereinafter mentioned) (*a*) *Yielding and paying* therefore unto him the said (*lessor*) and M. his wife and her heirs and assigns the several and respective rents royalties reservations and sums of money following (that is to say) (*b*) The sum of 1s. per ton of coals (except small coals which shall be used in the working of the said engines and in burning bricks and tiles) which during the continuance of the term of years shall or may be gotten wrought and taken from the said coal mines hereby demised the further sum of 4*d.* for each and every ton of slack (*c*) which shall or may be gotten wrought and taken as aforesaid the further sum of 2*d.* for each and every sack of coke which shall or may be made during the said term from the said coals so to be gotten wrought and taken as aforesaid and the further sum of 1s. 6*d.* for every 1000 of bricks tiles or quarries which during &c. shall be made upon the said demised premises from the clay to be raised and gotten out of the said clay pits and so in proportion for a less quantity of the said several articles respectively each and every of such tons to consist of and contain 20 cwt. and each cwt. to consist of and contain 120 lbs. and such weight to be ascertained by a proper and accurate gauge of the boat wherein such coals shall be delivered if carried away by water and by a proper weighing machine if carried away by land all which said several and respective royalties reservations or

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Reservations.

(*a*) If it be a lease of tin, lead and other mines of ore, say, "*Yielding rendering paying and delivering* therefore from time to time during the said term unto the said (*lessor*) and M. his wife and her heirs and assigns every fifth dish dole or part of all and every ore of lead tin silver copper or metals and minerals which shall be got raised or brought to grass during the said term out of or from the said mines or any or every of them the same to be well cleansed washed dressed and made merchantable and fit for smelting and delivered on the day &c. [*or* 'within the space of days next after the same shall have been procured'] giving from time to time and at all times unto the said (*lessor*) and M. his wife or her heirs and assigns or his her or their agent or toller days' previous notice of the time and place of such rendering and delivering." As to this reservation, see *Obs.* 3, *ante*, p. 1080.

(*b*) If the lands be demised also, say, "The yearly rent or sum of £ as and for the service rent of the said pieces or parcels of ground hereby demised, *also Yielding &c.*" (*see above.*)

(*c*) Slack means "small coals."

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Reservation of
additional
sums upon
contingent
events.

sums of money hereinbefore mentioned and reserved shall be paid and payable unto the said (*lessor*) and M. his wife her heirs and assigns by quarterly payments at or upon the several and respective days or times hereinafter mentioned and appointed for payment thereof (that is to say) the day &c. in each and every year without any deduction or abatement whatsoever for or in respect of any taxes or on any other account whatsoever the first payment to be made on the day of next And in case in any one quarter of the year from the said day of in the year 18 until the said mines shall be completely worked out or exhausted or the present lease determined the said rent reservation or royalty reserved for the large coals only shall not have amounted during any such quarter of a year to the full sum of £ Then yielding and paying unto the said (*lessor*) and M. his wife her heirs and assigns so much and such full and additional sum of money as the said rents royalties or reservations shall have so fallen short such last-mentioned additional sum to be paid upon the day which shall conclude the quarter wherein such deficiency shall have happened Nevertheless the said (*lessee*) his executors administrators or assigns in case of his or their having made up any such deficiencies or failure in the said rents royalties or reservations arising out of or from the said large coals as aforesaid shall be at liberty in any succeeding quarter of a year when the said rent royalty or reservation shall exceed the last-mentioned stipulated quarterly sum of £ to make up the former shorts (a) and deficiencies by selling or disposing of such quantity of the said large coals as shall be sufficient to reimburse him and themselves the monies he or they shall have paid to make up such deficiency as aforesaid without paying any rent for such last-mentioned quantity (b) [And in case in either of the two quarters during the term of six months to be computed from the day of now next ensuing the said rent reservations or royalties reserved for the said large coals only during either of such quarters of a year shall not have amounted to the full and clear sum of £ Then yielding &c. unto the said (*lessor*) and M. his wife and her heirs and assigns so much and such further and additional sums

(a) Shorts, or short workings, mean the quantity of coal or mineral deficient for making up a certain rent.

(b) See the general proviso at the end, which may be taken instead of what is included in brackets.

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of money as the said rents royalties or reservations for the said large coals shall have fallen short in either of those quarters of a year of the said sum of £ as and for the rent reservation or royalty for and in respect of such additional sum of money to be paid upon such day as shall conclude the quarter wherein such deficiency shall have happened as aforesaid Nevertheless the said (*lessee*) his executors administrators or assigns in case of his or their having made up any such deficiencies or failures in the said rents royalties or reservations arising out of or from the said large coals as aforesaid shall be at liberty in any succeeding quarter of the year when the said mine rent royalty or reservation for the said large coals only shall exceed the quarterly sum of £ to make up the former shorts and deficiencies by selling or disposing of such quantity of the said large coals as at the rate of the said reserved rent reservation or royalty shall be sufficient to reimburse him and themselves the monies he or they shall have paid to make up the deficiencies of the said quarterly mine rent or royalty of £ as aforesaid without paying any rent for such last-mentioned quantity And in case in any quarter of the year during the term of one year to be computed from the day of which will be in the year 18 the said rent reservation or royalty reserved for the said large coals only during each of such last-mentioned quarters of a year shall not amount to the full and clear sum of £ Then also yielding and paying unto the said (*lessor*) and M. his wife her heirs and assigns so much and such full and additional sum of money as the said rents royalties and reservations shall have fallen short in either of those last-mentioned quarters of a year of the said sum of £ as and for the rent royalty or reservation for or in respect of the said large coals Nevertheless the said (*lessee*) his executors administrators or assigns in case of his or their having made up such deficiency or failure in the said rents royalties or reservations arising out of or from the said large coals as aforesaid shall be at liberty from time to time in every succeeding quarter of a year when the said mine rent royalty or reservation for the said large coals only shall exceed the last-mentioned stipulated quarterly sum of £ to make up former shorts and deficiencies by selling or disposing of such quantity of the said large coals as at the rate of the said reserved rent royalty or reservation shall be sufficient to reimburse himself and themselves the monies he or they shall have paid to make

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Proviso as to
advance in the
price of coals.

up the deficiencies of the said quarterly mine rents or royalty of £ without paying any rent for such last-mentioned quantity] *And* in case at any time or times during the continuance of this demise or lease any advance or increase shall take place in the price of coals at in over and above or upon and beyond the following prices of coals coke slack bricks tiles and quarries being the present selling prices thereof respectively (that is to say) for large coals per ton &c. *Then yielding and paying* under the said (*lessor*) and M. his wife her heirs and assigns in addition to the several fixed royalties or mine rents hereinbefore expressed and reserved respectively one fourth part of such advance or increased price at which all or any of the said last above-mentioned articles to be raised gotten out of and from the said mines of coal and clay hereby demised shall be sold over and above the prices of s. s. and s. above mentioned except any increase which may happen by any future tax upon coals and bricks *Provided always* and it is hereby expressly declared and agreed by and between the said parties hereto that no part of the large coals whereon the rent or royalty of 1s. per ton is hereby reserved shall at any time or times during the said term hereby granted upon any pretence or for any purpose whatsoever be converted into coke or sold as slack by the said (*lessee*) his executors administrators or assigns *And further* that the said (*lessee*) his executors administrators and assigns shall and will from time to time and at all times during the said term convert into coke and slack respectively all such description of coals only which according to the custom of the country are usually converted into coke or slack in respect of which coke or slack a rent or royalty of 2*d.* for every sack of coke and 4*d.* for every ton of slack is or are hereby reserved *Provided also* that no such rents or royalties as aforesaid shall be demanded of or from or paid by the said (*lessee*) his executors administrators or assigns for or on account of any slack to be used or consumed by fire engines or steam engines or whimsies erected or to be erected for draining or drawing water or coals from the said collieries or mines or for or on account of any coals to be used by the workmen to be employed in or about the said works and premises as are customary to be allowed to them for their domestic purposes nor for any purpose of making bricks or tiles to be used applied or employed in any of the works drains tunnels soughs walls for keeping out or preventing the communication of damp or fire within the said pits nor on account of

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the bricks or tiles to be used in making erecting or building any wharfs quays warehouses bridges houses erections or buildings in upon or under the said demesne waste wood or common lands to be made erected or built at any time or times during the continuance of the said term of years All which said rents or sums of money are to be paid and payable by four equal quarterly payments in &c. the first quarterly payment to begin and be made on such of the said respective days or times as shall next happen after getting or raising of such coals &c. as aforesaid *Provided also* and it is hereby expressly declared and agreed by and between the parties to these presents that in case at any time or times hereafter during the continuance of the said term of years hereby granted the aforesaid rents royalties and reservations or any one or more of them shall be in arrear and unpaid for the space of thirty days next over or after every or any of the said days or times of payment whereupon the same ought to have been paid as aforesaid Then and in every such case and so often as it shall happen it shall and may be lawful for the said (*lessor*) and M. his wife and her heirs and assigns not only to stop hinder and obstruct the loading vending and carrying any of the coals bricks tiles or quarries from off the said demised premises but also to enter upon seize and distrain and according to law to sell and dispose of all and every or any of the coals clay bricks and tiles there lying above ground and all and every the horses cattle wains gins engines and other utensils and all materials used and employed for working the said coal mines clay pits and collieries *And also* all goods chattels and effects whatsoever being in upon or about the said premises to the intent that thereby and therewith the said (*lessor*) and M. his wife her heirs and assigns may be fully paid and satisfied the said rents and sums of money hereby respectively reserved and made payable as shall be then due and unpaid together with the full costs and charges to be occasioned by such default in payment distress and sale rendering upon demand the overplus to the owner or owners of the cattle goods and chattels so to be distrained and sold as aforesaid *Provided also (a)* and it is hereby further de-

Clause of distress.

Clause for making void the lease.

(a) If it be a lease of ore mines, say, "*Provided also* if the said (*lessee*) his executors &c. shall refuse or neglect to render and deliver or cause &c. unto the said (*lessor*) and M. his wife or her heirs and assigns every fifth dishdole or full fifth part of all and singular the said ore metal or mineral hereinbefore reserved as aforesaid according to the true intent and meaning of these presents within the space of thirty days next after the same ought to be ren-

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clared and agreed that if it shall happen that the aforesaid rents royalties and reservations or any of them or any part thereof shall have been unpaid by the space of sixty days next after any of the said days or times whereupon the same ought to have been paid as aforesaid and no sufficient distress or distresses can or may be found or gotten on the said demised premises to answer such arrear or arrears or if the said (*lessee*) his executors or administrators shall at any time or times hereafter during the said term hereby granted set let or part with the possession of the said premises hereby demised or any part or parts thereof or transfer this present demise or lease for all or any part of the said term hereby granted to any person or persons whomsoever without the consent in writing of the said (*lessor*) and M. his wife or her heirs and assigns for that purpose first had and obtained *Save and except* to or in trust for a wife child or children or to a partner or partners or in case he the said (*lessee*) shall be adjudicated a bankrupt or shall take the benefit of any act or acts of parliament now in force or hereafter to be passed for the relief of insolvent debtors or shall compound his debts or assign over his estate and effects for the payment thereof or in case any execution shall issue against him or them or his or their effects under and by virtue of which this lease or the term hereby granted shall be seized or levied on or in case the said (*lessee*) his executors administrators or assigns shall not from time to time duly observe and perform all the covenants and agreements herein contained and on his and their parts to be observed Then and in any of the said cases it shall and may be lawful for the said (*lessor*) and M. his wife and her heirs and assigns into and upon the said hereby demised lands mines and premises or any part thereof to re-enter and thereout to eject expel put out and remove the said (*lessee*) his executors administrators or assigns and his and their agents workmen labourers and servants and every of them and to have hold possess and enjoy the same lands mines and premises as in his her or their former estate as fully and effectually to all intents and purposes whatsoever as if these presents had not been made *And also* to work win and get the said mines and minerals hereby demised and sell and convert the same to and for his her or their own use and benefit and from thenceforth the said term of years and all the right

dered or delivered as aforesaid Or if the said (*lessee*) his &c. shall &c. let &c." (*as above.*)

and interest hereby granted and demised or intended so to be and every clause covenant and agreement herein contained shall cease determine and be absolutely void to all intents and purposes whatsoever (save and except so far as shall be necessary to recover any arrears of rents or royalties or to recover compensation for any breach or breaches of any of the covenants herein contained anything herein contained to the contrary in anywise notwithstanding) And the said (*lessee*) for himself his heirs executors and administrators *Doth* hereby covenant with the said (*lessor*) and M. his wife and her heirs and assigns in manner following (that is to say) That he the said (*lessee*) his executors administrators and assigns shall and will well and truly pay or cause to be paid unto the said (*lessor*) and M. his wife and her heirs and assigns the several and respective rents royalties and sums of money hereby reserved and made payable at or upon the several quarterly days and times and in manner and form hereinbefore in that behalf mentioned and appointed for payment thereof respectively and under and subject to the provisoes and restrictions hereinbefore contained without any deduction or liability for taxes or on any other account or pretence whatsoever And it is hereby agreed and declared by and between the parties hereto that the said payments shall be made in bills of exchange or other good and negotiable drafts or promissory notes payable in London and respectively dated on the several quarterly days in each and every year to fall due and become payable at a period not exceeding two months from the date or dates thereof And also that the said (*lessee*) his executors administrators or assigns shall previously to the day of 18 produce and get forth from or out of the said coal mines &c. tons of coals over and above small coals which shall be used in the working the said engines and burning bricks and tiles as aforesaid and after the said day of 18 during the continuance of this demise shall and will work get forth and produce from and out of the said coal pits &c. tons of coals over and above such small coals as aforesaid so as to make the said royalties therefrom within the several periods last mentioned amount unto the several respective sums of money hereinbefore mentioned and expressed in each and every quarter during the respective periods aforesaid and the same to be paid and payable upon each and every of the said quarterly days or times of payment hereinbefore mentioned although less quantities of the said large

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Covenants from
lessee.

To pay rents,
&c.

To get and
raise stipulated
quantity of
coals.

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Not to assign,
&c.

To work mines
properly.

To permit
lessor to ex-
amine works.

coals hereinbefore mentioned shall or may happen to have been gotten and raised in each and every preceding quarter unless such deficiency in the aforesaid specific quarterly quantities respectively shall have been occasioned by any of the obstructions hereinafter mentioned *And also* shall and will [*pay taxes, &c.* see *ante*, pp. 1048, 1062] *And also* shall not nor will at any time during the continuance of this demise set let or assign the said mines and premises hereby demised or any part thereof for all or any part of the said term hereby granted or grant to any person or persons or make or use or permit and suffer to be made or used any drift watergate or watercourse or any other communication whatsoever either from or into any part of the coal mines of the said (*lessor*) and M. his wife and her heirs and assigns without the license of the said (*lessor*) and M. his wife or her heirs or assigns *And also* shall and will use his and their utmost endeavours to work the said coal mines coal pits &c. properly and effectually by pursuing the seam of coals as far down as it shall extend and by working and carrying on the same fairly and regularly *And also* shall and will leave substantial walls and pillars of coal to support the roofs of each coal mine &c. as shall be wrought by him for the purpose of preventing the same from falling and also of avoiding crups and thrusts and also for the purpose of keeping clear and open the drifts aircourses and watercourses of the said coal mines &c. *And also* that the said (*lessee*) his executors administrators or assigns shall not nor will at any time during the continuance of this demise do or knowingly or willingly suffer to be done any act deed matter or thing whatsoever whereby or by reason or means whereof the said coal mines &c. and seams of coals hereby demised shall or may be drowned or otherwise become incapable of being worked or be prejudiced damaged or spoiled *And* shall not nor will win or work for coal under any part or parts of the lands or grounds of the said (*lessor*) and M. his wife her heirs and assigns or of any other person or persons whomsoever or under any other than such demesne &c. lands or grounds as are hereinbefore mentioned and specified and intended to be wrought under or exceeding a line falling in a perpendicular direction round the limits or boundaries of the said demesne &c. lands hereby demised or intended so to be *And also* that it shall be lawful for the said (*lessor*) and M. his wife and her heirs and assigns to appoint employ and keep at his her and their own expense and charges agents check clerks inspectors viewers

stewards or bailiffs to attend and reside constantly and regularly or occasionally as he she or they shall think proper upon in or near unto the said collieries or works *And also* by himself herself or themselves or his or their viewer or viewers agent or agents to be by him her or them employed or appointed as aforesaid at any time or times during &c. when any of the said several shafts of the said coal mines &c. are at work by the ropes or engines used at any of the said shafts and with the help of the workmen employed in the said mines or any of them to descend into the same and to plumb view line and survey the works thereof *Provided* that the said shafts or mines shall not be viewed as aforesaid oftener than once in the week and so that the workings of the said coal mines &c. shall not be thereby obstructed longer than necessity may require for the taking of such views *And also* that the said (*lessee*) his executors administrators and assigns shall and will at all times during the continuance of this demise keep regular books wherein shall be entered full fair and particular accounts of the quantities and number of tons of coals bricks and tiles which shall be gotten raised made and burnt and also the prices at or for which they shall be sold which said books shall be kept at some proper office or counting house within the parish of _____ and to which the said (*lessor*) and M. his wife and her heirs and assigns shall and may at all reasonable times have free access and may take copies and extracts therefrom as occasion shall or may require at his her or their free will and pleasure *And also* that the said (*lessee*) his executors administrators and assigns shall not nor will at any time or times during the continuance of this demise make any wilful or unnecessary damage or spoil of ground in having using or enjoying any way or ways in or through the lands or grounds hereinbefore mentioned or do any unnecessary thing by virtue of the power and liberties hereby given and shall not nor will sink or do any damage in or to any houses or buildings belonging to or standing in or upon the said demised premises or any part thereof *And* shall and will half-yearly on the _____ day of _____ and the _____ day of _____ in every year during the said term hereby granted pay unto the said (*lessor*) or M. his wife or her heirs and assigns all such sum or sums of money as shall or may be required to make good and repair the damage done by the said (*lessee*) his executors administrators or assigns or his or their agents servants miners and workmen on the said demesne &c. lands or grounds or any part or parts thereof or in the use or

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To keep books
of account.

Not to make
unnecessary
damage, &c.

And pay to-
wards repairs,
&c.

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To fence in
useless shafts,
&c.

To leave shafts
to lessor.

And all en-
gines, &c.

in good repair.

exercise of any of the powers or liberties hereby granted such sum or sums of money being first ascertained (if required) by any two indifferent persons as arbitrators to be chosen one of them by the said (*lessor*) and M. his wife or her heirs or assigns and the other by the said (*lessee*) &c. within days next after any such damage shall be so done as aforesaid And in case any of the said parties shall neglect or refuse on their parts to name a proper person as arbitrator within days after being required thereto then by two indifferent persons to be chosen by the party willing to name a proper person and in case the arbitrators so chosen by either of the said ways as aforesaid shall not agree then and in that case the sum shall be ascertained by an umpire to be chosen by the two said arbitrators whose determination shall be final and conclusive (a) *And also* that he the said (*lessee*) his executors administrators or assigns shall and will at all times during the continuance of this demise secure fence and rail round all the useless shafts and pits so as to prevent any person or persons or the cattle of any of the tenants of the said land or grounds for falling in And in case any damage shall happen by reason of any such shafts or pits not being secured or fastened as aforesaid he the said (*lessee*) his executors administrators or assigns shall and will save harmless and indemnified the said (*lessor*) and M. his wife her heirs and assigns of and from the same or any actions or costs which may arise thereby *And also* shall and will at all times during the continuance of this demise keep and at the end or other sooner determination of the said term leave all and every the workpits shafts and all the drifts and watercourses of or belonging to the said demised coal mines &c. or such of them as shall not be worked out open free and clear *And also* all and every the whimsies gins engines and other machinery mentioned and specified in the schedule hereunder written or hereto annexed in good tenantable order and condition (reasonable use and wear and unavoidable accidents only excepted) Together with all such timbers deals and other materials which shall be provided by the said (*lessee*) his &c. as shall be requisite to support the said shafts and pits and roof of coal mines and prevent the same from falling in or being

(a) If it be necessary, add, "*And also* if required by the said (*lessor*) and M. his wife or her heirs and assigns fill up all and every the said pits or mines which shall be exhausted or arch over the same with bricks in a workmanlike manner and restore the said lands and hereditaments to a state fit for cultivation so far as circumstances will permit."

otherwise damaged And shall and will at the end &c. peaceably &c. [see *General Precedent*] deliver up unto the said (*lessor*) or M. his wife or her heirs and assigns the said collieries coal mines &c. whimsies gins engines and all and singular the premises hereinbefore mentioned and intended to be hereby demised in such good order and plight as a well-wrought colliery ought to be left in (a) *Provided always* and the true intent and meaning of these presents is that if any of the said shafts or pits shall at any time or times during &c. be stopped or obstructed in the working thereof either by fire water damps or other accidents not arising from the wilful default or mismanagement of the said (*lessee*) his executors administrators or assigns Then and in such case the said (*lessee*) his &c. shall not be compellable under or by virtue of the covenant hereinbefore for that purpose contained to get and raise the aforesaid quantity of _____ tons per year but only such proportionate quantity as the said remaining collieries coal mines &c. shall be capable of producing And the said (*lessor*) for himself and M. his wife and her heirs and assigns *Doth* hereby covenant &c. with &c. the said (*lessee*) his &c. that he the said (*lessee*) &c. paying the several rents royalties and reservations and performing &c. shall &c. quietly &c. (b) [see *General Precedent*] *Provided always* and it is hereby declared

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Mines.
And deliver up
coal mines, &c.

Proviso as to
shafts that are
stopped up, &c.

Covenant for
quiet enjoy-
ment.

Power to abandon
mines (c).

(a) Instead of the mine rent, before reserved, in case of deficiency, may be added the following proviso, "*Provided always* and the true intent and meaning of these presents is that in case the said (*lessee*) his executors administrators or assigns shall not in any one year during &c. raise or produce _____ tons of coal over and above such small coals as aforesaid And if the said (*lessee*) his executors administrators or assigns shall make good the deficiency in the succeeding year then he the said (*lessee*) his heirs executors administrators or assigns shall not be subject or liable to a breach of covenant in consequence of such deficiency *Provided also*" &c.

(b) In a lease of lead mines for forty-two years the lessor is made to covenant for title and further assurance, see Bainbridge on Mines, pp. 592, 593, 2nd ed.

(c) It is observed by Mr. Bainbridge, that it is usual to introduce a power for the lessee to abandon the mines and determine the lease at the end of any one year, but that care should be taken in not making the power depend upon the absolute fulfilment of all the terms and covenants of a lease, so as to produce a condition precedent; for it is hardly too much to say, that no mining lease is *exactly* complied with. The proper course is to make the power wholly independent of any breach of covenants, and to leave the breaches to the usual legal remedies, Bainbridge on Mines, p. 207, 2nd ed., from which the following proviso is taken, *Ib.*, p. 605:—" *Provided also* and it is hereby agreed that in case the said (*lessee*) his executors administrators or assigns shall be desirous at the end of any year of the said term hereby granted to

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abandon the
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and agreed by the said (*lessor*) and M. his wife that if at any time or times during &c. the said coal mines or collieries in consequence of being so stopped or obstructed by fire water damp or other accidents not arising from the default or neglect of the said (*lessee*) his executors administrators or assigns shall not within days in any quarter be capable of producing tons of fuel coals after such allowances as are hereinbefore mentioned and the said (*lessee*) his executors administrators or assigns shall be minded and desirous to abandon or relinquish the said mines of coal &c. hereby demised &c. and the future working thereof Then and in every such case it shall and may be lawful to and for the said (*lessee*) his executors or administrators upon giving calendar months' notice of such his intention and after the end of the calendar months and after payment of all rent and arrears of rent which shall be then due for or in respect of the said coal mines &c. hereby demised or intended so to be and after payment of all damages (if any) which shall have been sustained in consequence of the breach or nonperformance of any of the covenants and agreements herein contained on the part of the said (*lessee*) his &c. to be done and performed these presents and every clause matter or thing herein contained shall cease determine and be absolutely void *Provided also* and it is also declared and agreed that it shall and may be lawful for the said (*lessor*) or M. his wife or her heirs and assigns at the end or other sooner determination of &c. to purchase all or any of the whimsies gins engines &c. or other erections to be made erected and set up by or at the expense of the said (*lessee*) his &c. upon the said demesne &c. and not included in the schedule hereunder written or hereunto annexed upon paying such price for the same as shall

abandon and yield up the said mines and premises hereby demised and of such his or their desire shall give notice in writing to the said (*lessor*) and M. his wife or her heirs or assigns at their his or her usual or last known place of abode in England six calendar months or more before the period of such proposed abandonment then this present indenture and the term or estate hereby granted or demised and every clause matter and thing herein contained shall at such last-mentioned period cease determine and become absolutely void to all intents and purposes whatsoever except in respect of any previous breach or nonperformance of all or any of the covenants and agreements hereinbefore contained on the part of the said (*lessee*) his executors administrators and assigns and except in respect of the covenants and agreements herein mentioned to be done and performed by him or them after the expiration or sooner determination of the said term." See another form of a similar proviso, 2 Platt on Leases, pp. 804, 805.

in case of disagreement between the parties to be settled by two indifferent persons or their umpire in manner hereinbefore mentioned [*It is generally advisable to add an arbitration clause*] *And it is hereby* lastly declared and agreed that if during the said term hereby granted or at the end or sooner determination thereof or at any time afterwards any disputes or differences shall happen to arise between the said (*lessor*) and M. his wife her heirs or assigns and the said (*lessee*) his executors administrators or assigns concerning any of the clauses covenants and agreements herein contained or in anywise relating thereto or any valuation to be made as aforesaid or any other matter or thing whatsoever relating to the said mines and premises Then and in all such cases such doubt dispute or difference shall be referred to the arbitration or award of such two persons as shall be nominated or appointed for that purpose by the parties in difference one of the said arbitrators to be named by the said (*lessor*) and M. his wife her heirs or assigns and the other of them by the said (*lessee*) his executors administrators or assigns and such arbitrators shall with all convenient speed proceed to the determination and settlement of the matters in dispute and shall either immediately appoint some third person to act as umpire in case of ultimate difference between them or to act immediately in conjunction with them and such matters to be decided from time to time by a majority or shall appoint such third person when and in case such ultimate difference shall arise *And* the said arbitrators or umpire (as the case may be) shall if they or he so think proper require the parties in difference to enter into and execute such bonds or agreements for submission to the award of the said arbitrators or umpire and for making such submission a rule of any court of law or equity and the award to be made in pursuance of such submission shall be binding on all the said parties and their respective heirs executors administrators and assigns *And* in case either of the said parties in difference shall neglect or refuse for fourteen days after notice in writing given by the other party requiring him or them to appoint such arbitrator as aforesaid then and in every such case it shall be lawful for the arbitrator chosen by the party giving such notice by any writing under his hand to nominate and appoint a person to act as arbitrator on the part of

No.
CCCCXLVII.
Mines.

Arbitration
clause (a).

(a) See ARBITRATION, *ante*, pp. 308—322, and Arbitration Clause, *ante*, p. 686, and n. (c).

No.
CCCCXLVII.
Mines.

the person or persons so refusing or neglecting as aforesaid and the person so nominated and appointed shall be competent and qualified to act in the said arbitration to all intents and purposes as if he had been regularly nominated and appointed by the person or persons refusing or neglecting as aforesaid *And that as often as any dispute shall arise between the said parties all books of accounts writings and all other papers in anywise relating to or connected with such dispute in their or any or either of their custody or power shall be produced and delivered to the said arbitrators or their umpire for their inspection or guidance in adjusting and settling the same In witness &c.*

Forms of leases of mines will be found in Bainbridge on the Law of Mines, pp. 584—605, 2nd ed.; 2 Platt on Leases, 740—805; Prideaux on Conv. 446—453, 3rd ed.; 4 Byth. Conv. by Sweet, pp. 685—766; 4 Martin's Conv. pp. 120—164.



No.
CCCCXLVIII
of Mills.

No. CCCCXLVIII.

Lease of Mills and Lands to Two as Tenants in Common, with Power to pull down Houses and cut Timber.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. and E. F. of &c. of the other part Witnesseth That in consideration of the yearly rent hereinafter reserved and of the covenants and agreements hereinafter contained and on the part of the said C. D. and E. F. their executors administrators and assigns to be paid kept done and performed He the said A. B. Doth hereby demise and lease unto the said C. D. and E. F. their executors administrators and assigns All those (a) cotton mills &c. situate &c. and called &c. and also All those pieces and parcels of land &c. together with the water and streams in anywise leading to the said mills and all and singular easements ways paths passages heads mill ponds water watercourses profits advantages commodities and appurtenances whatsoever

(a) If it be a windmill, say, "All that mill or machine for grinding corn or other grain called mill standing and being on a certain piece or parcel of ground And all the said piece &c. together with all and all manner of other erections engines utensils and implements and the appurtenances therein."

to the said premises belonging or in anywise appertaining or with the same or any part thereof held used occupied or enjoyed or known taken or considered as part or parcel thereof with full liberty to make drains and collect and carry water for the use of the said mills up to the top of the several streams or springs for supplying water for the use of the said mills *And also* with full power and authority for them the said C. D. and E. F. their executors &c. to pull down and remove all or any of the buildings hereby demised and to build any new or other erections or buildings upon the said lands hereby demised or any part thereof and to cut down any timber or other wood now growing or being or which during the term hereby demised shall grow or be upon the land or premises hereby demised or any part thereof and convey the same to and for their own use and benefit without being accountable for the same and in such manner as they shall think fit *To have* &c. the said mills lands tenements and hereditaments and all and singular other the premises hereinbefore expressed to be hereby demised with their and every of their appurtenances unto the said C. D. and E. F. equally to be divided between them as tenants in common and not as joint tenants and their respective executors administrators and assigns from &c. for and during the full and complete term of years *Yielding and paying* for the same yearly and every year during the said term unto the said A. B. his heirs and assigns the rent or sum of £ by two equal half-yearly payments on the &c. the first payment &c. to be made on &c. *And* the said C. D. and E. F. for themselves (a) their heirs executors and administrators *Do* and each of them *Doth* for himself his heirs executors and administrators covenant with the said (*lessee*) his heirs and assigns in manner following (that is to say) That they the said C. D. and E. F. their executors &c. or some or one of them shall and will from time to time and at all times during the continuance of the said term hereby granted well and truly pay or cause to be paid unto the said (*lessor*) his heirs and assigns the said yearly rent or sum of £ upon the several days

No.
CCCCXLVIII
Of Mills.

Covenants
from lessees.

(a) If the covenant is intended to be strictly several, say, "And the said C. D. doth hereby for himself his heirs executors administrators and assigns covenant &c. that he the said C. D. his heirs executors administrators or assigns shall and will well and truly pay or cause to be paid &c. the said yearly rent or sum of £ (being one moiety or half part of the said yearly rent or sum of £ hereinbefore reserved &c.) and also one moiety or half part of and in all taxes &c."

No.
CCCCXLVIII
Of Mills.

and in the manner hereinbefore mentioned or appointed for payment thereof and according to the true intent and meaning of these presents *And also* well and truly pay and satisfy the land tax sewers rate and all and all manner of other taxes rates duties and assessments whatsoever whether parliamentary parochial or otherwise which now are or shall or may at any time hereafter during the continuance of the said term be lawfully assessed or imposed upon or be payable in respect of the demised premises or any part thereof *Provided always* that in case the said rent &c. shall be unpaid for the space of &c. [*Power to re-enter, see General Precedent*] *And* the said A. B. for himself his heirs and assigns doth hereby covenant with the said C. D. and E. F. their executors administrators and assigns that they the said C. D. and E. F. paying &c. shall (*peaceably enjoy*) *In witness* &c.

No.
CCCCXLIX.
Of Tolls.

No. CCCCXLIX.

Lease of Tolls of Turnpike Roads (a).

Recital of putting up tolls to auction.

This Indenture made &c. Between (*trustees*) being the trustees appointed by or under a certain act of parliament made &c. intituled "An Act" &c. of the one part and (*lessee*) of &c. and (*sureties*) of &c. of the other part *Whereas* at a meeting of the trustees of the said turnpike road held at the in the said county on the day of by public notice and advertisement duly given for the purpose of letting to farm the tolls of the several gates erected upon the said turnpike road [*or* "the tolls hereinafter mentioned,"] in the manner directed by an act passed in the third year of the reign of his late Majesty King George the Fourth intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England" *And also* by an act passed in the fourth year of the reign of his said majesty and intituled "An Act to explain and amend an Act passed in the third year of the reign of his present Majesty to amend &c." (*as above*) the said (*lessee*) became the highest or last bidder for the same at the yearly rent of £ and was accordingly declared the farmer or renter thereof for the term of years from the day of *And whereas* the said (*sureties*) have at the request

Agreement of sureties to join with lessee.

(a) As to the letting of tolls, see Oke's Law of Turnpike Roads, pp. 268—285.

of the said (*lessee*) and in order to satisfy the conditions of letting the said tolls agreed to become parties to these presents and to enter into covenants as sureties along with him the said (*lessee*) for payment of the yearly rent and for the performance of the covenants and agreements hereinafter reserved and contained *Now this Indenture witnesseth* That for and in consideration of the rent hereinafter reserved and of the covenants and agreements hereinafter contained on the part and behalf of the said (*lessee*) and (*sureties*) their respective executors and administrators to be paid done and performed they the said (*trustees*) in pursuance and exercise of the power and authority given to or vested in them in and by the said hereinbefore mentioned acts or any or either of them and of all other power or powers authority and authorities in anywise enabling them in this behalf *Do* and each of them *Doth* hereby demise lease and to farm let unto the said (*lessee*) his executors and administrators all and singular the tolls of the several gates erected upon the said turnpike road (that is to say) of the gates situate &c. and of the gate &c. with full power and authority for him the said (*lessee*) his executors and administrators and such person or persons as he or they shall authorize or appoint to collect or receive the said tolls according and subject to the provisions and restrictions of the said several acts or any or either of them and under and subject to such rules orders regulations restrictions and variations as have been or shall at any time or times hereafter be made ordered or agreed upon by the said trustees for the time being of the said turnpike road pursuant to the powers vested in them in and by the said acts or any or either of them and for that purpose to occupy and enjoy the tollhouse [*or* "tollhouses"] at which the said tolls are to be collected and to arise with all the appurtenances and conveniences to the said tollhouse [*or* "tollhouses"] belonging during so long time only of the term hereby granted as the said (*lessee*) his executors or administrators shall duly and regularly pay the rent and perform the covenants and agreements herein reserved and contained *To have and to hold* the said tolls and gates and all and singular other the premises hereinbefore mentioned and intended to be hereby demised unto the said (*lessee*) his executors and administrators from the . . . day of . . . for and during and unto the full end and term of . . . from thence next ensuing and fully to be complete and ended *Yielding and paying* therefore during the said term unto the trustees for the time being or their treasurer for the

No.
CCCCXLIX.
Of Tolls.

Demise.

Habendum.

Term.

Reddendum.

No.
CCCCXLIX.
Of Tolls.

Covenants by
lessee and
sureties.

time being or to such other person or persons as they shall appoint the yearly rent or sum of £ of lawful money of Great Britain by thirteen equal instalments in the year at the end of each successive period of four weeks (*or as the case may be*) without making any deduction or abatement thereout on any account or pretence whatsoever the first monthly payment to be made on the day of now next ensuing *Provided always* and it is hereby declared and agreed by and between the parties hereto that if the said rent hereinbefore reserved shall be in arrear by the space of days next after any of the days whereon the same ought to be paid as aforesaid and pursuant to the covenant hereinafter contained or if the said (*lessee*) his executors or administrators shall neglect or refuse to perform the covenants and agreements herein contained and which on his or their part and behalf are or ought to be done and performed then and in either of the said cases it shall and may be lawful to and for the trustees of the said turnpike road for the time being or such person or persons as they shall authorize or appoint for that purpose into and upon the said tolls gates toll-houses conveniences and premises with the appurtenances or into or upon any part thereof in the name of the whole wholly to re-enter and the same to have again collect receive retain repossess and enjoy as in their former estate and the said (*lessee*) his executors and administrators and all other collectors receivers and occupiers of the said premises thereout and from thenceforth utterly to expel put out and remove and thereupon and from thenceforth to vacate and determine these presents or otherwise to act in the premises as to them the said trustees shall seem meet according to the directions and provisions in that behalf contained in and by the said several acts of parliament or any or either of them anything to the contrary thereof hereinbefore contained in anywise notwithstanding *And* the said (*lessee and sureties*) do hereby for themselves their heirs executors and administrators and each of them doth hereby for himself his heirs executors and administrators covenant with the said (*trustees*) and the trustees of the said turnpike road for the time being That he the said (*lessee*) his executors administrators or assigns shall and will pay or cause to be paid unto the trustees of the said turnpike road for the time being or their treasurer for the time being or to such other person or persons as they shall appoint the said yearly rent or sum of £ by thirteen equal monthly payments at the end of each successive period of four

weeks without any deduction or abatement whatsoever as aforesaid according to the true intent and meaning of these presents [*and to repair the tollhouses or any other condition as agreed upon*] And also that the said (*lessee*) his executors or administrators shall and will well and truly observe fulfil abide by and keep all the conditions restrictions provisoes clauses and limitations respectively limited imposed and declared in and by the said several hereinbefore recited acts or either of them concerning or appertaining to collectors or gatekeepers or to the managing recovering or receiving the tolls or on any other account relating to or concerning the office of collector or gatekeeper And also shall and will from time to time and at all times during the said term pay obedience to and perform all and every such orders and directions as shall be legal and as the trustees of the said turnpike road at any of their meetings during the time aforesaid shall think expedient and proper to be done by them respectively to the said turnpike road and to the tolls to arise therefrom And moreover that at the expiration or sooner determination of the said term he the said (*lessee*) his executors and administrators shall and will quietly quit yield and deliver up the possession of the said tollhouse [*or "tollhouses"*] and tollbar [*or "bars"*] and the receipt and collection of the said tolls to the trustees for the time being of the said turnpike road or to such person or persons as they shall appoint for that purpose In witness &c.

[*See Form of a Bond taken from Lessee of Tolls and his Sureties by way of Agreement, Oke's Law of Turnpike Roads, pp. 283, 284.*]

—◆—

No. CCCCL.

Form of a Lease for a further Term by way of Indorsement.

This Indenture made &c. Between the within named (*lessor*) of the one part and the within named (*lessee*) of the other part *Witnesseth* That for and in consideration of the rent &c. and the covenants hereinafter mentioned which on the part and behalf of the said (*lessee*) his &c. ought to be paid and performed He the said (*lessor*) *Doth* demise &c. unto &c. All that &c. and all and singular other the premises comprised in the within written indenture (except as therein is excepted) *To have* &c. the said &c. and all and singular &c. hereby demised &c. (except as before

No.
CCCCXLIX.
Of Tolls.

No. CCCCL.
By
Indorsement.

No. CCCCL.

*By
Indorsement.*

excepted) unto the said (*lessee*) his &c. from &c. which will be in the year of and when the said within written indenture of lease will expire for and during the term of years *Subject* to and under the like rent and payable in like manner as is within mentioned for and in respect of the rent reserved in and by the said within written indenture of lease and subject to the like power of entry as well on nonpayment of rent as on the happening of any of the other incidents mentioned in the within proviso or condition of re-entry *And* it is hereby declared and agreed by and between the said parties to these presents that they and their respective heirs executors administrators and assigns shall and will by these presents during the continuance of the conditional term of years hereby granted stand and be bound in and by the said indenture of lease for and during the now residue unexpired of the within mentioned term hereby granted it being the intent and meaning hereof that this present indorsed lease and the additional term hereby granted shall be upon such and the like footing and all the covenants clauses conditions and agreements therein respectively contained be equally available take place and be of like force and effect to all intents and purposes whatsoever as if every article clause matter and thing contained in the said within written indenture of lease were word for word repeated and again inserted in these presents *In witness &c.*

ASSIGNMENTS OF LEASES, see *ante*, pp. 388—396.

LETTERS.

Letters of Attorney, see *post*, POWER OF ATTORNEY.

LETTERS OF CREDIT.

No. CCCCLI.

No. CCCCLI.

*Credit.**Form of a Bill or Letter of Credit.*

Obs. If the bill exceeds 20*l.* it requires an agreement stamp.

This present Writing witnesseth That I A. B. of merchant [or “banker” as the case may be] do undertake to or with

C. D. of &c. merchant his executors and administrators that if the said C. D. do deliver or cause to be delivered unto E. F. of &c. or to his use any sum or sums of money amounting to the sum of £ sterling of lawful British money [*or* “any sum or sums of money as the said E. F. shall have occasion for”] and shall take a bill under the hand and seal of the said E. F. confessing and showing the certainty thereof Then I my executors and administrators having the same bill delivered to me or them shall and will immediately upon the receipt of the same pay or cause to be paid unto the said C. D. his executors administrators or assigns all such sums of money as shall be contained in the said bill at &c. for which payment in manner and form aforesaid I bind myself my executors administrators and assigns by these presents *In witness &c.*

No. CCCCLI.

Credit.

No. CCCCLII.

No. CCCCLII.

Another Form.

Mr. E. F.

London April

Sir

My last to you was of the 12th ult. wherein I wrote what was needful in answer to yours of the 10th of the same month and this serves chiefly to desire you to furnish and pay unto Mr. C. D. an English gentleman to the value of two thousand crowns at one or more times according as he shall have occasion for it and request the same on you taking his receipt or bills of exchange for the monies which you shall so furnish him with and put it to my account and this my letter of credit shall be your sufficient warrant for so doing.

Yours &c.

A. B.

To Mr. E. F. merchant at Madrid.

No.
CCCCLIII.

Licence.

Stamp.

No. CCCCLIII.

Letter of Licence from one Creditor to a Debtor.

Obs. By the 55 Geo. 3, c. 184, a letter of licence is charged with a stamp duty of 1l. 15s. By the 13 & 14 Vict. c. 97, where the deed contains 2160 words or upwards, a progressive duty of 10s. is payable for every entire 1080 words above the first 1080 words. See *ante*, p. 887.

To all to whom these Presents shall come I A. B. of &c. send greeting *Whereas* (debtor) of &c. is and stands indebted to me in a large sum of money which by reason of losses he is unable at present to pay *Now therefore know ye* That I the said A. B. *Do* by these presents give and grant unto the said (D.) full free and safe license and liberty to come and go pass and repass from place to place where and as his business shall serve and require from the day of the date of these presents for the term of years and fully to be complete and ended without being molested charged or troubled in his person or otherwise for or concerning any debt duty sum or sums of money or other matter or thing whereby or wherewith he is or stands indebted and bound to me or shall or may be chargeable in anywise howsoever And I the said A. B. do hereby for myself my executors and administrators covenant and agree with the said (D.) his executors and administrators that neither I the said A. B. my executors and administrators nor any other person or persons by with or through our or any of our order direction privity or consent shall or will at any time hereafter during the said term of years sue arrest attach seize molest implead or trouble the said (D.) his heirs executors or administrators or his or their bodies goods or estates for or concerning any debt or sum or sums of money which he now owes or is indebted to me by himself solely or jointly with or for any other person or persons by bond bill or covenant or otherwise howsoever or for any other matter cause or thing whatsoever wherewith he or they now is or are or shall or may be charged or chargeable and that these presents shall or may be pleaded and allowed in any court of law or equity in discharge to all actions suits or other proceedings judgments and executions which shall or may be brought commenced sued prosecuted awarded or recovered against the said (D.) his heirs executors or administrators or his or their goods or estates by me the said A. B. my

heirs executors or administrators or any other person or persons by or through my their or any of their means act privily order consent or procurement contrary to the true intent and meaning of these presents [A proviso for avoiding the licence in case the debtor dies or absconds is sometimes added, 5 Jarm. Conv. p. 199.] In witness &c.

No.
CCCCLIII.
Licence.

Letter of Licence from several Creditors to a Debtor, see No. CCXCII., ante, pp. 579, 580.

LICENCES.

No. CCCCLIV.

No.
CCCCLIV.
To Assign.

A Licence from a Lessor to a Lessee to Assign or Underlet.

Obs. 1. A parol licence will not be sufficient where one in writing is required, *Richardson v. Evans*, 3 Madd. 218. See *Roe v. Harrison*, 2 T. R. 425; *Doe d. Weatherhead v. Curwood*, 2 Har. & W. 140.

2. Where a licence to assign is once given by the landlord, the proviso will altogether cease, unless revived by an express stipulation to that effect in the licence, see ante, LEASES, Pref. sect. 35, p. 1028.

3. A common deed stamp, if under hand and seal; and an agreement stamp, if it be under hand only, and contain any proviso or restriction; otherwise no stamp appears to be necessary.

Know all men That we (*Lessors*) &c. do hereby license authorize and empower (*Lessee*) or (*executors of lessee* &c.) to assign the messuage or tenement and premises comprised in and demised by a certain indenture of lease bearing date &c. with the appurtenances unto (*Assignee*) his executors administrators and assigns henceforth for the residue of the said term of years therein subject to the rents and covenants reserved and contained in the said indenture and which are on the lessee's or tenant's part to be paid kept and performed (a) *Provided* (b) *nevertheless* that

(a) If the licence be given without restriction, then say, "Unto any person or persons any covenant clause or restriction or agreement therein contained to the contrary notwithstanding *In witness* &c."

(b) It does not appear that this proviso could have the effect intended. The lessor, in assenting to an assignment by his lessee, should secure himself

No.
CCCCCLIV.
To Assign.

this licence shall not be construed to extend to giving the said (*assignee*) permission to make any further assignment underlease or disposition of the said premises or any part thereof without the like license and consent of the said (*lessors*) their successors or assigns first had and obtained for that purpose. *In witness &c.*



No. CCCCLV.
*To carry on
Trade.*

No. CCCCLV.

*A Licence to carry on a particular Trade, in Waiver of a
Restriction contained in a Lease.*

Memorandum That I (*Lessor*) of &c. do hereby give full license and liberty unto (*Lessee*) of &c. to use exercise and carry on upon the messuage or tenement and premises demised unto him by an indenture of lease bearing date &c. the trade or business of and for that purpose if he shall think proper to convert the same into a shop or warehouse for the sale of the several goods wares and other things incident or belonging to the said business of *Upon this express condition* nevertheless that the said (*lessee*) his executors or administrators do and shall in such case before the expiration of the term of years granted to him by the said indenture of lease reconvert the said premises into a private house or dwelling and leave the same in such state of repair as is required by the terms of the said lease and in such and the same manner in all respects as if this license had not been given or the said premises had not been converted into a place of sale for goods and merchandize.

As witness my hand this day of

(*Lessor.*)



against such assignee's alienation without licence, by requiring from him a new covenant against assignment, and a new proviso for re-entry on breach, which should be effected by a separate deed. See 2 Platt on Leases, p. 275, and form of such deed, *Ib.*, pp. 813—815, and of a deed of defeasance for the same purpose, 2 Prest. Conv. pp. 518—520. A bill for altering the law on this, amongst other subjects, was passed in the House of Lords in the Session 1859, but withdrawn in the House of Commons, in consequence of the early prospect of a dissolution.

No. CCCCLVI.

No.
CCCCLVI.
*To demise by
Copyholder.*

*A Licence by the Lord to a Copyholder to demise Copyhold
Premises.*

Obs. 1. As to the necessity of a licence, see *ante*, LEASES, Pref. sect. 12, p. 1020. If the lord be merely a tenant for life, and die, the term of years granted in consequence of such licence will determine with it, Co. Cop. s. 34; Gilb. Ten. 298. So, likewise, a lord may not grant a licence to a copyholder to demise for life, because such a demise would pass a freehold, Godb. 171. Nor, if a lord grant a licence to a tenant in tail to demise for twenty years, and he demise accordingly, shall such demise bind the issue in tail, 2 Watk. Cop. 120; 1 Scriv. Cop. 548; Kitch. 84, *b*. See Shelford on Copyholds, pp. 155—158.

2. The steward cannot grant such licence unless expressly authorized so to do by the lord; but any act of the latter, as signing the court book, or receiving the fine, will serve as a confirmation of the licence, 2 Watk. Cop. 118; 1 Scriv. Cop. 546.

3. As to the stamp on a licence to demise of copyholds, see *ante*, Stamp. p. 1039.

Licence to demise (a).

The manor of) *Be it remembered* That on the
in the county of) day of in the year of our Lord
A. Z. lord of the said manor, by J. S. the steward
thereof did out of court give and grant to C. D. one of the
customary tenants of the said manor full license power and
authority to demise and lease [*to some particular person named
as the case may be or*] to any person or persons willing to take
the same as lessee or lessees to the said C. D. but not by way
of mortgage his or their executors administrators and assigns
All &c. with the appurtenances (to which same premises the
said C. D. was admitted tenant at a court held for the said
manor on the day of) to hold for any term or
number of years not exceeding years to be computed
from the day of last *Saving* always to the lord of
the said manor and to all and every lord and lady lords and
ladies of the said manor for the time being all and all manner
of fines heriots rents customs and services therefore due and of
right accustomed And for this licence the said C. D. hath
paid for a fine the sum of £ [*when there is a settled fine
add, "according to the custom of the said manor"*].

J. S. steward.

(a) See Scriv. on Copyholds, p. 833.

No.
CCCCLVII.
To fell Timber.

No. CCCCLVII.

Licence to fell Timber (a).

The manor of } *Be it remembered* That on the
 in the county of } day of &c. A. Z. lord of the said manor
 by J. S. the steward thereof did out of court give and grant
 to C. D. one of the customary tenants of the said manor full
 license to fell within calendar months from the day above
 mentioned oak trees standing and growing in a certain
 close called part of the copyhold tenements of the said
 C. D. within the said manor and already marked for that pur-
 pose by the woodward of the said A. Z. and the same to sell
 and dispose of or convert to his own use at his free will and
 pleasure without rendering any account for the same [*or "the*
same to be used and employed by the said C. D. in the repairs
and improvement of his aforesaid tenement" (as the case may be)]
 And for this licence the said C. D. hath paid by way of fine the
 sum of £

J. S. steward.

(a) See Scriv. on Copyholds, p. 833.

MORTGAGES.

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SECT. 1. For ordinary purposes it will suffice to state that a mortgage is a conveyance, by way of pledge, of real or personal estate, for securing the payment of money borrowed and interest, with the condition for making it void or for reconveyance of the property mortgaged on payment of principal and interest at the day appointed; and answers to the *mortuum vadium* at common law. Formerly, when an estate was made over to another until he had repaid himself out of the rents and profits both principal and interest, this was called *vivum vadium*, Litt. sect. 332. There is another kind of security called a Welsh mortgage, which differed from the *vivum vadium* in this, where the proviso for redemption did not oblige the mortgagor to pay the money on a particular day, but allowed him to do it at an indefinite time, so that the rents and profits were applied in satisfaction of the interest only, and not of the principal. The *vivum vadium* is entirely out of use, and the Welsh mortgage is now very rarely used. There is another class of mortgages termed equitable mortgages, which arise upon an agreement to mortgage accompanied with a deposit of title-deeds, or simply upon a deposit of deeds without any express agreement. This kind of mortgages was first established by the case of *Russell v. Russell*, 1 Br. C. C. 209. See Nos. LXI., LXII., *ante*, pp. 124—126; Coote on Mortg. pp. 163—174, 3rd ed. It is not necessary for the purpose of effecting an equitable mortgage that all the title-deeds relating to the property should be deposited, but a deposit of a material portion of them is sufficient, *Lacon v. Allen*, 26 L. J., Chan. 18; see *Ex parte Pearse*, 1 Buck. 525. A deposit of copies of court roll may create an equitable mortgage of copyholds, *Ex parte Warner*, 19 Ves. 202; *Winter v. Lord Anson*, 3 Russ. 492; *Whitbread v. Jordan*, 1 Y. & C. 303.

Mortgages.

What constitutes a mortgage.

2. No particular form of words or conveyance is necessary to constitute a mortgage. If, upon the whole, it appears to be the intention of the parties that the conveyance should be a security for money, it is considered in equity as a mortgage, *Howard v. Harris*, 1 Vern. 190; and a mortgage is redeemable in its nature, even although there is an express agreement of the parties that it shall not be so, or that the right of redemption shall be confined to a particular time or to a particular description of persons, Co. Litt. 205, n. 1; *Spurgeon v. Collier*, 1 Eden, 59. The right of redemption is considered in equity as inseparably incident to a mortgage, and cannot be restrained by any clause or agreement whatever, it being a rule, that what was once a mortgage, must always continue a mortgage, 2 Cruise Dig. 89; 7 Ves. 273. Thus a proviso that the mortgagor shall redeem *during his life* will not exclude redemption by his heir, *Jason v. Eyres*, 2 Chan. Ca. 83. A distinction, however, is observed where there is actually a new agreement between the parties, *Endsworth v. Griffith*, 15 Vin. 468; 2 Eq. Ab. 595; 5 Toml. P. C. 184; *Cotterell v. Purchase*, For. 61. Or where money is lent by one relation to another, with a proviso that if the money is not settled on a certain day the land shall be settled in a particular manner for the benefit of the family, *Bonham v. Newcomb*, 1 Eq. Ab. 312; *King v. Bromley*, 2 Eq. Ab. 595. Or where a defeasible or conditional purchase has been made, subject to repurchase within a time limited, *Floyer v. Lavington*, 1 P. Wms. 268; *Mellon v. Lees*, 2 Atk. 494; *Tasburgh v. Echlin*, 2 Toml. P. C. 265. If a power to repurchase be given upon a condition, for example, that rent be in the mean time regularly paid, the right cannot be enforced, unless the stipulation has been complied with; for it is not a stipulation for a penalty or forfeiture, but a privilege conferred, *Davis v. Thomas*, 1 Russ. & M. 506. See *Williams v. Owen*, 10 Sim. 386; *Perry v. Meddowcroft*, 4 Beav. 197; Coote on Mortg. pp. 10—22, 3rd ed.

The rule of law is, that *primâ facie* an absolute conveyance, containing nothing to show that the relation of debtor and creditor is to exist between the parties, does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase. In every such case the question is, what, upon a fair construction, is the meaning of the instruments, *Alderson v. White*, 2 De G. & J. 97.

Who can mortgage.

3. All parties who are capable of contracting in general, and not under any legal disabilities, may mortgage their estates to the extent of their interest, whether tenants in fee-simple, tenants for life, or tenants in tail. Some who have no beneficial interest may also be enabled to mortgage, as trustees and executors under a power of sale.

Power of trustees to mortgage.

A trust for sale, if there be nothing to negative the settlor's intention to convert the estate absolutely, will not authorize the trustees to execute a mortgage, *Haldenby v. Spofforth*, 1 Beav. 390; *Stroug-*

hill v. Anstey, 1 De G., M. & G. 635; *Page v. Cooper*, 16 Beav. 396; *Lewin on Trusts*, 416, 3rd ed. See *Ball v. Harris*, 4 My. & Cr. 264. A power to raise money by sale or mortgage has been held to authorize a mortgage, with power of sale, such power being incident to the power to mortgage, unless expressly excluded, *Bridges v. Longman*, 24 Beav. 27. See *Clark v. Royal Panopticon*, 4 Drew. 26; 3 Jur., N. S. 178; 27 L. J., Chan. 207. Trustees, who are directed to sell an estate out and out, are not justified in raising money by mortgage, notwithstanding a discretion is given to them to postpone the sale, *Devaynes v. Robinson*, 24 Beav. 86; 3 Jur., N. S. 707; 27 L. J., Chan. 157. As to the power of a factor to pledge the goods of the principal, see *ante*, p. 136, pl. 7.

4. Every species of property, real or personal, which may be granted or assigned, may be the subject of a mortgage. An advowson may be aliened by way of mortgage, but can only be effectual by means of a power of sale. An equity of redemption being the ancient estate in the land, may be itself the subject of a mortgage; but, to prevent abuse, the 4 & 5 Will. & Mary, c. 16, provides that the making of any subsequent mortgage without giving notice to the intended mortgagee, by writing under the mortgagor's hand, of every mortgage already made by him of the same land, is punished by forfeiture of the equity of redemption to the person thus defrauded. Rent-charges, in lieu of impropriate tithes in the hands of laymen, may be mortgaged like any other hereditaments; tithes, and rent-charges in lieu thereof, glebe lands, and church benefices may, by the 17 Geo. 3, c. 53, amended and enlarged by the 20 Geo. 3, c. 66, the 5 Geo. 4, c. 89, 1 & 2 Vict. c. 23, and 1 & 2 Vict. c. 106, ss. 62, 63, be mortgaged with the consent of the patron and ordinary, for the purpose of repairing or rebuilding the parsonage. There is a form of such mortgage in the second schedule to the last act. A mortgage of goods or chattels personal, *bonâ fide*, and for valuable consideration, is good; but the 13 Eliz. c. 5, and subsequent statutes, which make retention of possession by the vendor a badge of fraud, apply equally to the mortgagor, see *ante*, pp. 463—477. The mortgage of ships is regulated by the Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, ss. 66—83. Canal, railway and other companies are usually empowered to raise money by mortgage of their property. The Companies Clauses Consolidation Act, 1845, contains provisions as to mortgages by companies incorporated by Act of Parliament, 8 & 9 Vict. c. 16, ss. 38—54. See *Shelford on the Law of Railways*, pp. 155—162, 3rd ed. As to joint-stock companies, see 19 & 20 Vict. c. 47, ss. 44—46, and Form H. in schedule thereto.

Persons having fiduciary or partial interests in landed property are in many instances authorized by various statutes to raise money on mortgage, as under the General Inclosure Acts, 41 Geo. 3, c. 109,

Mortgages.

What may be mortgaged.
Advowsons.
Equity of redemption.

Tithes, &c.

Ships.

Companies.

Mortgages authorized by various statutes.

Mortgages.

s. 30; 8 & 9 Vict. c. 118, s. 133; 11 & 12 Vict. c. 99, s. 8. The Land Tax Redemption Act, 42 Geo. 3, c. 116, ss. 51, 53, 54; the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137, s. 21; 18 & 19 Vict. c. 124, s. 30. The Drainage and Improvement Acts allow landowners to borrow money for the improvement of their property under the general supervision and control of the inclosure commissioners, 8 & 9 Vict. c. 56; 9 & 10 Vict. c. 101; 12 & 13 Vict. c. 100; 13 & 14 Vict. c. 31. Mortgages may be made for the purpose of raising succession duty, 16 & 17 Vict. c. 51, ss. 16, 27, 44; and under the Copyhold Act, 1858, 21 & 22 Vict. c. 94, ss. 23—36. As to mortgages by trustees of turnpike roads, see 3 Geo. 4, c. 126, s. 81; 4 Geo. 4, c. 95, s. 60; 9 Geo. 4, c. 77, ss. 10—13; Oke's Law of Turnpike Roads, pp. 120—143.

Modes of
effecting mort-
gages.

5. The modes of effecting mortgages depend upon the nature of the property mortgaged. Mortgages of freeholds, in modern practice, are of two kinds; namely, mortgages in fee, or for such other interest as the mortgagor has in the lands, or by a demise for a long term of years, attended with a condition in the same deed, that if the principal and interest be paid within a given time the lands shall be reconveyed, or the deeds of mortgage shall be void, or the term shall cease and determine. If the former be the wording of the proviso, and the money be actually paid within the limited time, a reconveyance will nevertheless be necessary; but if the latter be the form, then, on payment of the money within the period mentioned in the condition, the estate of the mortgagee will *ipso facto* determine, Coote on Mortg. 109, 3rd ed. Mortgages for terms have this advantage, that the term and the right in equity to receive the mortgage debt vest in the same person, namely, the personal representative of the mortgagee; but in the case of a mortgage in fee, the estate, on the death of the mortgagee, goes to his heir or devisee, and the money is payable to his executors, so that in some cases a transfer of the legal estate can only be obtained under the Trustee Act, 1850. On the other hand, in the case of a mortgage for years, if the estate is foreclosed, the mortgagee will be entitled to a term only, with all its disadvantages, Co. Litt. 205, n. 1; but a covenant is usually inserted in the deed that the mortgagor after default shall confirm the term, or, if required, convey the fee to the mortgagee, or to such person as he shall appoint. Mortgages of copyholds are usually made by a conditional surrender, see *post*, MORTGAGE OF COPYHOLDS, p. 1167, *et seq.* When leaseholds are made a mortgage security, they are made either by feoffment, with livery of seisin, or by grant, if they are leases for life of a freehold interest; and by assignment or underlease, if they are leases for years; but as to the mortgage of leaseholds, see further, *post*, *Precedents*. Mortgages of goods and chattels may be made by assignment, bargain and sale, and conditional bill of sale. See BILLS OF SALE, *ante*, pp. 462—491.

Copyholds.

Leaseholds.

Goods.

6. A mortgage deed resembles a purchase deed in most respects, as far as the *testatum* or witnessing part, but differs very materially in the provisos or covenants. The proviso for redemption, is the principal mark of distinction between a mortgage and a conveyance on absolute sale, and is never omitted in a pure mortgage as distinguished from a trust for sale. The mortgagor usually enters into a covenant for the repayment of the mortgage money at a certain time and place. The appointment of a certain place is material, as without such a stipulation the mortgagor would be obliged to tender the money to the mortgagee in person, Co. Litt. 210, *see ante*, p. 1032, pl. 50. As a mortgage, though in fee, is considered in equity only as personal estate, the mortgage money is paid, not to the heir but to the executor, although the covenant be for payment to the heirs or executors, *Thornborough v. Baker*, 1 Ch. Ca. 283; *S. C.* 2 Freem. 143; and also 3 Swanst. 634, from Ld. Nottingham's MSS. On the same principle the executor of a mortgagor was until recently bound to redeem for the benefit of the heir, because the money borrowed had increased the personal fund, *Wolston v. Aston*, Hard. 512; *Havel v. Price*, 1 P. Wms. 291; *Cope v. Cope*, 2 Salk. 449; *Gower v. Mead*, Prec. Ch. 2. But by stat. 17 & 18 Vict. c. 113, the heir or devisee of real estate cannot claim payment of the mortgage out of the personal assets; but this act does not affect the rights of parties claiming under any instrument made before the 1st of January, 1855. And if the mortgagor do not redeem, the personal representatives of the mortgagee will be entitled to the land, *Ellis v. Guaras*, 2 Ch. Ca. 50; unless it appears to have been the intention of the mortgagee that it should go as real estate, *Noys v. Mordaunt*, 2 Vern. 581. Sometimes, in addition to the covenant to pay, a bond is given by the mortgagor; but, since actions on covenants may be maintained by creditors equally as on bonds, 11 Geo. 4 & 1 Will. 4, c. 47, s. 3, the taking a bond as well as a covenant is an unnecessary expense.

7. Covenants for title in a mortgage in fee must be made with the mortgagee, his heirs and assigns, and not as in a covenant, to pay him, his executors, administrators and assigns, because the latter is only a personal covenant; but the former runs with the land. Covenants for title in mortgages for terms of years and of chattel interests, are made with the mortgagee, his executors, administrators and assigns. Such covenants must likewise always be general, *i. e.* not restricted by the words, "For and notwithstanding," &c. to the acts of any particular person. The reason for the covenants for title in a mortgage, unlike those in a purchase deed, being always general, is, that, as the mortgagee is in any event bound to repay the money he borrows, and as the covenant for title can only be enforced against him to the extent of such mortgage money and interest, no possible damage can accrue to him from the general covenant.

Mortgages.

Special covenants.

8. Several other covenants are usually added as occasion requires, as a covenant to insure, which can seldom be omitted with safety where houses or other buildings are the subject of mortgage. See *Dobson v. Land*, 8 Hare, 216; 4 De G. & Sm. 575. A covenant authorizing the mortgagor to grant leases may in some instances be necessary; and as a mortgagor in possession is restrained from committing waste, *Hanson v. Derby*, 2 Vern. 392; *Robinson v. Litton*, 3 Atk. 210, a proviso either to restrain him from felling timber, or to authorize him to do it, may in some cases be advisable. A mortgagor has no right to cut timber upon the mortgaged estate, and if he does so, he will be restrained by an injunction if it would be injurious to the mortgagee's security, *King v. Smith*, 2 Hare, 239. Where a security is defective, the mortgagee may fell timber and sell it, and apply the produce in liquidation of his debt, Coote on Mortg. 344, 3rd ed. To these may occasionally be added a covenant for the abatement of interest, and a covenant that the mortgage money shall remain for a certain time upon the security of the premises. (See miscellaneous clauses for this and other purposes, *post*, pp. 1158—1166.)

Estate of the mortgagee.

9. As soon as the estate of the mortgagee is created by the conveyance, he may immediately enter upon the lands, but actual possession is seldom taken, as the mortgagee is liable to be dispossessed by payment of the mortgage money at the time limited. It is usual, therefore, to insert a covenant in the deed, that the mortgagor shall receive the rents and profits until default shall be made, see *post*, p. 1134, n. (a). A mortgagor, however, where there is no express or implied agreement as to possession, holds the mortgaged premises by the will or permission of the mortgagee, who, it has been held, is entitled by ejectment, and without notice, to recover against him or his tenant, *Keech v. Hall*, Dougl. 21; *Moss v. Gallimore*, Ib. 266; 1 T. R. 378.

Foreclosure.

10. After the day of payment is past, the mortgagee may call on the mortgagor in a court of equity to redeem his estate, or in default thereof to be for ever foreclosed; that is, barred from any further right of redemption, *Bonham v. Newcombe*, 1 Vern. 232; *S. C.* 2 Vent. 364, and may file a bill or claim of foreclosure without taking possession, *Lord Penrhyn v. Hughes*, 5 Ves. 106; and if out of possession he may, except under particular circumstances, bring an ejectment at the same time that he has a bill of foreclosure depending, *Booth v. Booth*, 2 Atk. 343; but the 7 Geo. 2, c. 20, provides in favour of mortgagors, that if the person having a right to redeem shall at any time pending an action pay the mortgagee, or, in case of his refusal, bring into court the principal and interest with all costs, the monies so paid or brought into court shall be in full discharge of the mortgage. And in all suits in equity for foreclosure, courts of equity may, in like case, make such a decree before hearing as they could have made after. See *Sutton v. Rawlings*, 3 Exch. 407.

Where an action of ejectment shall be brought by any mortgagee, his heirs, &c., for the recovery of the possession of any mortgaged hereditaments, and no suit shall be then depending in any court of equity in England for the foreclosing or redeeming of such mortgaged hereditaments, then if the person having right to redeem the same and who shall appear and become defendant in such action, shall at any time pending such action pay unto such mortgagee, or, in case of his refusal, shall bring into court where such action shall be depending, all such principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity upon such mortgage (such money for principal, interest and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer of such court), the monies so paid to such mortgagee, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall discharge every such mortgagor or defendant from the same accordingly; and shall, by rule of the same court, compel such mortgagee, at the costs of such mortgagor, to assign, surrender or reconvey such mortgaged hereditaments, and deliver up all deeds, &c. in his custody relating to the title of such mortgaged hereditaments unto such mortgagor who shall have paid or brought such monies into the court, his heirs, &c., or to such other person or persons as he or they shall appoint, 15 & 16 Vict. c. 76, s. 219. A judge at chambers has jurisdiction under this section to order a stay of proceedings on payment of principal, interest and costs, *Lawrence v. Hogben*, 26 L. J., Exch. 55.

The above provision does not extend to cases where the right of redemption is controverted or the money due not adjusted, nor to prejudice any subsequent mortgage, 15 & 16 Vict. c. 76, s. 220.

Where a principal sum is made payable on a given day, with interest thereon half-yearly in the meantime, and before the day appointed for payment of the principal sum default is made in payment of the interest thereon, the mortgagee, at any time after that event, has a right to file a bill of foreclosure, because his right becomes absolute at law by the nonpayment of the interest, the estate having been conveyed subject to a condition, which has not been fulfilled, *Burrowes v. Molloy*, 2 Jones & Lat. 521; *Edwards v. Martin*, 25 L. J., Chan. 284. But it is otherwise where the mortgagee covenants that the principal money shall not be called in until after the decease of the mortgagor, *Burrowes v. Molloy*, 3 Jones & Lat. 521.

By 15 & 16 Vict. c. 86, s. 48, the Court of Chancery, in a foreclosure suit, may, upon the request of the mortgagee or of a subsequent incumbrancer, direct a sale, instead of a foreclosure, on such terms as such court shall think fit. As to sales under this statute, see Dart, 748, 3rd ed.; *Bellamy v. Cockell*, 18 Jur. 465; *Hurst v. Hurst*, 16

Mortgages.

In ejectment by mortgagee, on payment by the mortgagor of principal, interest and costs, the court may compel mortgagee to reconvey.

Foreclosure for nonpayment of interest.

Sale instead of foreclosure.

Mortgages.

Beav. 372; *Wickham v. Nicholson*, 19 Beav. 38; *Smith v. Robinson*, 1 Sm. & G. 140. A sale may be obtained, notwithstanding the mortgagee has a power of sale under the mortgage deed, *Hutton v. Sealy*, 4 Jur., N. S. 450; 27 L. J., Chan. 263.

Power of sale.

11. To obviate the inconveniences and delays which attend bills to foreclose, it is now a frequent practice to frame the conveyance so as to enable the mortgagee, after a given time, to procure his principal and interest by a sale of the mortgaged premises. Sometimes, instead of a power of sale, the estate is conveyed to a trustee or trustees in trust to reconvey the same to the mortgagor on a given day, if he repay the money on that day; but if he do not, then in trust to sell the estate, pay the principal, interest and expenses, and hand the surplus to the mortgagor; and it is now decided, that where a mortgagee, or a trustee for him, is empowered to sell in default of payment of mortgage money, he may make a good title to a purchaser, although the mortgagor do not join in the conveyance, provided such power be given to him by the terms of the deed, *Corder v. Morgan*, 18 Ves. 344; *Clay v. Sharpe*, Sugd. V. & P. Appendix, N. 14; *Matthie v. Edwards*, 16 L. J., Chan. 405; *Alexander v. Crosbie*, 6 Ir. Eq. R. 513; 1 Jones & Lat. 670. A mortgagee cannot sell pending a suit for redemption, *Rhodes v. Buckland*, 16 Beav. 212. A liberty to buy in the property offered for sale by auction, under a power of sale, ought to be inserted in the mortgage deed, to protect the mortgagee or trustee for sale, *Ex parte Lewis*, 1 Gl. & Jam. 69. A proviso for foreclosure, notwithstanding a power of sale, is frequently inserted, though, as it is conceived, unnecessarily, see *Ex parte Hodgson*, 1 Gl. & Jam. 69.

Property subject to two mortgages was assigned to a second mortgagee upon trust to sell, and out of the proceeds to pay off the first mortgage, then the second mortgage, and to pay the surplus to the mortgagor; it was held, that this did not bind the trustee not to sell, unless he could so pay off the first mortgage, and that a sale subject to the first mortgage was valid, *Manser v. Dix*, 3 Jur., N. S. 252. See *post*, p. 1147, n.

A mortgage was made containing a power of sale, and the estate was afterwards mortgaged to a second mortgagee. The power of sale having been *bonâ fide* exercised, and the estate purchased by the mortgagor for its full value, being less than the money due on the first mortgage; it was held, that this transaction amounted to nothing more than a clearing off of the first incumbrance, and that the mortgagor could not by those means obtain a title to the estate free from the charge of the second mortgagee, *Otter v. Lord Vaux*, 2 Kay & J. 650; 25 L. J., Chan. 734.

Stamp duty.

12. By 13 & 14 Vict. c. 97, any MORTGAGE, conditional surrender by way of mortgage, further charge, wadset and heritable bond, disposition, assignation

or tack in security, and eik to a reversion, of or affecting any lands, estate or property (a), real or personal, heritable or moveable, whatsoever :

Also any conveyance of any lands, estate or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, *except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number :*

Also any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation or tack of any lands, estate or property whatsoever, which shall be apparently absolute, but intended only as a security :

Also any agreement, contract or bond, accompanied with a deposit of title deeds for making a mortgage, wadset or any such other security or conveyance as aforesaid of any lands, estate or property comprised in such title deeds, or for pledging or charging the same as a security : (b)

Where the same respectively shall be made as a security for the payment of any *definite and certain* sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable—

(a) A mortgage of a policy of insurance is property which requires an *ad valorem* stamp, *Caldwell v. Dawson*, 5 Exch. 1. See *Potter v. Commissioners of Inland Revenue*, 10 Exch. 147.

(b) A document stating goods to have been deposited as a security for repayment of money lent, and containing, in default of payment, a power of sale, does not require a mortgage stamp within the above Act, *Attenborough v. Commissioners of Inland Revenue*, 25 Law J., Exch. 22; 11 Exch. 461. A deposit of goods or any document relating to goods, as a bill of lading or a dock warrant, accompanied by a memorandum explaining its object, requires neither a mortgage or an agreement stamp, *Harris v. Birch*, 9 M. & W. 591; *Franklin v. Neate*, 13 M. & W. 481.

Stamps.

	£	s.	d.
Not exceeding 50l.	0	1	3
Exceeding 50l. and not exceeding 100l.	0	2	6
Exceeding 100l. and not exceeding 150l.	0	3	9
Exceeding 150l. and not exceeding 200l.	0	5	0
Exceeding 200l. and not exceeding 250l.	0	6	3
Exceeding 250l. and not exceeding 300l.	0	7	6
And where the same shall exceed 300l., then for every 100l. and also for any fractional part of 100l.	0	2	6

And where the same respectively shall be made as a security for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, other than and except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, or for the renewal of any grant or lease upon the dropping of any life or lives, pursuant to any agreement in any deed whereby any estate or interest held upon such life or lives shall be granted, assigned or assured, or whereby any annuity shall be granted or secured for such life or lives;

If the total amount of the money secured or to be ultimately recoverable thereupon shall be limited not to exceed a given sum

The same duty as on a mortgage or wadset for such limited sum.

And if the total amount of the money secured or to be ultimately recoverable thereupon shall be uncertain and without any limit, then the same shall be available as a security or charge for such an amount only of money or stock intended to be thereby secured as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.

Stamps.

And where the same respectively shall be made as a security for the transfer or re-transfer of any share in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of *any other* company or corporation, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable

The same duty as on a mortgage or wadset for a sum of money equal to the value of the stock or fund secured according to the average price thereof on the day of the date of the mortgage or other instrument aforesaid, or on either of the ten days preceding, or if there shall not have been any known sale on any of such days, then on the latest day preceding on which there shall have been a known sale.

MORTGAGE.—And where any such deed or instrument as aforesaid shall be made respectively as a security for the payment of any *rent-charge or annuity*, or any sum or sums of money by way of repayment, or in satisfaction or discharge, or in redemption of any sum of money lent, advanced or paid, as or for or in the nature of a loan intended to be repaid, satisfied, discharged or redeemed in manner aforesaid ..

The same duty as on a mortgage or wadset for the sum of money so lent, advanced or paid.

MORTGAGE.—Any TRANSFER or ASSIGNMENT, disposition or assignation of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, or of the money or stock thereby secured;

Where no further sum of money or stock shall be added to the principal money or stock already secured—

If such principal money or stock already secured shall not exceed in amount or value in the whole the sum of 1,400*l.* ..

The same duty as on a mortgage or wadset for the total amount or value of such principal money or stock.

And if such principal money or stock shall exceed in amount or value in the whole sum of 1,400*l.*

£	s.	d.
1	15	0

And where any further sum of money or stock shall be added to the principal money or stock already secured

The same duty as on a mortgage or wadset for such further money or stock only.

And in every other case not hereinbefore expressly provided for, such transfer, assignment, dispo-

Stamps.

sition or assignation shall be chargeable with	£	s.	d.
the duty of	1	15	0

Provided always, that no such deed or instrument as aforesaid shall in any of the said several cases be chargeable with any further or other duty than is herein expressly provided (*except progressive duty*), by reason of its containing any further or additional security for the payment or transfer or re-transfer of such money or stock, or any interest or dividends thereon, or any new covenant, proviso, power, stipulation or agreement, or other matter whatever in relation to such money or stock, or the interest or dividends thereon, or by reason of its containing all or any of such matters.

MORTGAGE.—Any deed or instrument made for the *further assurance* only of any estate or property which shall have been already mortgaged, pledged or charged as a security, by any deed or instrument which shall have paid the *ad valorem* duty on mortgages or bonds chargeable under any Act or Acts in force at the time of making such last-mentioned deed or instrument :

Also any deed or instrument made as an *additional or further security* for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, which shall have been already secured by any deed or instrument which shall have paid the said *ad valorem* duty on mortgages or bonds chargeable as aforesaid, shall be chargeable respectively with the following duties; (that is to say,)

Where the total amount or value of the money or stock already secured, and in respect whereof the said *ad valorem* duty shall have been paid, shall not exceed the sum of 1,400l.

The same duty as on a mortgage or wadset for the amount or value of the said money or stock.

And in any other case

1 15 0

Provided always, that if any further sum of money or stock shall be added to the principal money or stock already secured, such deed or instrument for further assurance, or additional or further security, either by the mortgagor or by any person entitled to

the property mortgaged by descent, devise or bequest from such mortgagor, shall be chargeable only (*exclusive of progressive duty*) with the *ad valorem* duty on mortgages under this Act, in respect of such further sum of money or stock in lieu of the duty aforesaid, notwithstanding that the same deed or instrument may also contain any covenant either by the mortgagor or by any person entitled as aforesaid, proviso, power, stipulation or agreement, or other matter whatever in relation to the money or stock already secured, or the interest or dividends thereon.

£ s. d. Stamps.

MORTGAGE.—Any RECONVEYANCE, release, surrender, discharge or renunciation of any mortgage or wadset, or of any other such security as aforesaid, or of the benefit thereof, or of the money or stock thereby secured;

Where the total amount of the principal money or stock at any time secured shall not exceed the sum of 1,400*l.*

{ The same duty as on a mortgage or wadset for the amount or value of the said money or stock.

And in any other case

1 15 0

And in all the said several cases of deeds and instruments chargeable under the head of **MORTGAGE** see **PROGRESSIVE DUTY**, *ante*, p. 887.

No. CCCCLVIII.

Mortgage in Fee. (General Precedent.)

Obs. As to a mortgage in fee, see Pref. sect. 5; as to the stamp, see sect. 12, *ante*, p. 1127.

This Indenture made &c. Between (*mortgagor*) of &c. of the one part and (*mortgagee*) of &c. of the other part *Whereas* the said (*mortgagee*) at the request of the said (*mortgagor*) hath agreed to advance and lend him the sum of £ on the security hereinafter appearing *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the sum of £ to the said (*mortgagor*) by the said (*mortgagee*)

No.
CCCCLVIII.
*Of Freeholds in
Fee.*

No.
CCCCLVIII.
*Of Freeholds in
Fee.*

Covenant for
payment.

Habendum.

Proviso for re-
demption.

Covenant to
pay interest
on mortgage
money.

paid &c. the receipt &c. He the said (*mortgagor*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors and administrators that the said (*mortgagor*) his heirs executors or administrators will pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns the sum of £ [principal sum] together with interest for the same in the meantime at the rate of £ per cent. per annum on the day of next [six months from the date] without any deduction or abatement whatsoever *And this Indenture also witnesseth* That in further pursuance of the said agreement and for the considerations aforesaid He the said (*mortgagor*) *Doth* hereby grant and convey unto the said (*mortgagee*) and his heirs *All* &c. (*parcels*) together with &c. [general words, see *post*, PURCHASE DEEDS] And all the estate &c. *To have and to hold* the said messuages pieces of land and hereditaments and all and singular other the premises hereby granted or intended so to be with their appurtenances unto and to the use of the said (*mortgagee*) his heirs and assigns for ever *Subject* nevertheless to the proviso hereinafter contained for the redemption of the said premises (that is to say) *Provided always* and it is hereby agreed and declared That if the said (*mortgagor*) his heirs executors administrators or assigns or any of them shall pay or cause to be paid unto the said (*mortgagee*) his executors administrators or assigns the said sum of £ on the said day of next with interest for the same after the rate of £ per cent. per annum in the meantime without any deduction or abatement Then and in that case the said (*mortgagee*) his heirs or assigns shall and will at the request costs and charges of the said (*mortgagor*) his heirs executors administrators or assigns convey and assure the said messuages pieces of land and hereditaments expressed to be hereby granted with the appurtenances unto and to the use of the said (*mortgagor*) his heirs or assigns or otherwise as he or they shall direct or appoint free from all incumbrances in the meantime to be made done or committed by the said (*mortgagee*) his heirs and assigns or any person or persons claiming or to claim by from through or under him them or any of them (so as for the doing thereof he they or any of them shall not be compelled or compellable to go or travel from his or their usual place of abode) *And* the said (*mortgagor*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns that in case

the said principal sum of £ or any part thereof shall remain unpaid after the said day of he the said (*mortgagor*) his heirs executors or administrators or some or one of them will so long as the said sum of £ or any part thereof shall remain due pay or cause to be paid unto the said (*mortgagee*) his executors administrators and assigns interest for the said sum of £ or for so much as shall for the time being remain unpaid after the rate of £ per cent. per annum by equal half-yearly payments on the day of and the day of in every year *And* the said (*mortgagor*) doth hereby for himself his heirs &c. further covenant with the said (*mortgagee*) his heirs and assigns that he the said (*mortgagor*) now is lawfully and rightfully seised of the said messuages &c. for a good and indefeasible estate of inheritance in fee simple without any manner of condition or limitation of uses or trusts to defeat alter change charge or determine the same estate *And* that he the said (*mortgagor*) now hath in himself good right and lawful authority to assure the said hereditaments and premises with their appurtenances unto and to the use of the said (*mortgagee*) his heirs and assigns in manner aforesaid *And also* that if default shall be made in payment of the said sum of £ or the interest thereof or any part thereof respectively contrary to the aforesaid proviso or covenants for payment of the same Then and in such case it shall be lawful for the said (*mortgagee*) his heirs and assigns at any time thereafter to enter into the said premises hereby granted or intended so to be and the same to have hold occupy possess and enjoy and to receive and take the rents issues and profits thereof to and for his and their own use and benefit without any lawful let denial and disturbance whatsoever of from or by the said (*mortgagor*) his heirs or assigns or any person or persons whomsoever *And* that free and clear and freely and clearly and absolutely acquitted and for ever discharged or otherwise by the said (*mortgagor*) his heirs executors or administrators well and sufficiently saved harmless and indemnified of from and against all and all manner of former and other estates titles claims charges and incumbrances whatsoever *And moreover* that he the said (*mortgagor*) and his heirs and all other persons lawfully or equitably claiming any estate right or interest in or to the said hereditaments and premises or any part thereof shall and will from time to time and at all times after default shall be made in payment of the said sum of £ or the interest thereof or of any part thereof respectively as afore-

No.
CCCCLVIII.
Of Freeholds in Fee.

Covenants for title.
Lawfully seised.

Good right to convey.

Quiet enjoyment.

For further assurance.

No.
CCCCLVIII.
*Of Freeholds in
Fee.*

Proviso for
quiet enjoy-
ment until
default.

Covenant to
insure.

said at the request of the said (*mortgagee*) his heirs or assigns but at the costs and charges of the said (*mortgagor*) his heirs executors administrators or assigns make do and execute or cause and procure to be made done and executed all such further and other lawful and reasonable acts deeds conveyances and assurances in the law for the more perfectly conveying and assuring of the said hereditaments and premises with their appurtenances unto and to the use of the said (*mortgagee*) his heirs or assigns as by the said (*mortgagee*) his heirs or assigns shall be reasonably required *Provided always* and it is hereby declared and agreed that until default shall be made in payment of the said sum of £ or the interest thereof or of some part thereof respectively contrary to the true intent and meaning of these presents it shall be lawful for the said (*mortgagor*) his heirs and assigns peaceably and quietly to have hold use occupy possess and enjoy the said hereditaments hereby granted or intended so to be and to receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any disturbance whatsoever from or by the said (*mortgagee*) his heirs executors administrators or assigns or of any other person or persons claiming through or under him (*a*) *And* the said (*mortgagor*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns that he the said (*mortgagor*) his executors and administrators shall and will from time to time and at all times during the continuance of this present security at his and their sole expense insure and keep insured in some public office or offices for insurance to be approved of by the said (*mortgagee*) his executors administrators or assigns all buildings whatsoever already erected or to be erected upon the said pieces of land and hereditaments hereby granted or any part thereof against loss or damage by fire in the sum of £ at the least and shall and will assign the policy or policies of such insurance and the full benefit thereof unto the said (*mortgagee*) his executors administrators and assigns *Upon*

(*a*) This proviso has latterly been entirely omitted by some conveyancers, see 2 Davidson's Conv. p. 511, 2nd ed. It cannot have much effect, except where a distant period is appointed for payment of the principal sum, or the money is not to be called in for a specified period, *Wilkinson v. Hall*, 3 Bing. N. C. 508; 4 Scott, 301. See *Keech v. Hall*, 1 Smith's L. C. pp. 440—447, 4th ed. See *ante*, Pref. sect. 9, p. 1124.

trust for better securing to him and them the repayment of the said sum of £ and interest hereby secured and subject thereto *In trust* for the said (*mortgagor*) his executors administrators or assigns And in case the said (*mortgagor*) his executors or administrators shall neglect to insure and keep insured the said buildings to the amount aforesaid or to make such assignment of the policy or policies to be made or taken as aforesaid that then and so often as the same shall happen it shall be lawful for but not obligatory upon the said (*mortgagee*) his executors administrators or assigns out of his and their own monies to insure and keep insured the said buildings in the sum of £ or any less sum and for such time as he or they shall think proper and that the premium costs and charges of making and continuing such insurances by the said (*mortgagee*) his executors administrators or assigns as aforesaid shall become a charge upon the premises hereby assured and shall carry interest after the rate aforesaid from the time of payment thereof jointly with the other principal sum of £ hereby secured (*a*) *In witness &c.*

No.
CCCCLVIII.
Of Freeholds in Fee.

—◆—

No. CCCCLIX.

Mortgage by Demise for securing Re-transfer of Stock.

No.
CCCCCLIX.
Of Freeholds by Demise.

Obs. 1. As to a mortgage by demise, see Pref. sect. 5; as to the transfer of stock, see BOND, No. CCLXXXII., *ante*, p. 555.

2. Where a mortgage is made as a security for the re-transfer of Stamp. stock, it is liable to the same duty as a mortgage for a sum of money equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the mortgage, or on either of the ten days preceding. See *ante*, pp. 1127—1129.

(*a*) See other covenants to insure, *post*, pp. 1147, 1163. If it be so agreed, say, “*Provided also* and it is hereby agreed and declared that when and so often as the interest of the said sum of £ being the principal money lent and advanced upon the security hereby made shall happen to be made by equal half-yearly payments upon the day of and the day of in every year or within days then next but not oftener or otherwise there shall be by the said (*mortgagee*) his executors &c. abated or discounted out of such interest to be computed after the rate of £ per cent. per annum so much and such part thereof as will reduce the same for such respective payments only from the rate aforesaid to the rate of £ per cent. per annum any thing herein contained to the contrary in anywise

Abatement of interest on regular payments (*b*).

(*b*) See another form for this purpose, *post*, p. 1160.

No.
CCCCLIX.
Of Freeholds by
Demise.

Recital of con-
tract of loan of
stock.

This Indenture made &c. Between (Mortgagor) of &c. of the one part and (Mortgagee) of &c. of the other part Whereas the said (mortgagee) hath agreed to lend to the said (mortgagor) the sum of £ 3 per cent. Consolidated Bank Annuities standing in the name of the said (mortgagee) in the books of the Governor and Company of the Bank of England And the said (mortgagee) hath this day at the request of the said (mortgagor) sold the said sum of £ 3 per cent. Consolidated Bank Annuities and has paid the net proceeds amounting to the sum of £ cash after deducting the costs of the said sale unto the said (mortgagor) as he doth hereby acknowledge

Power of leasing to be reserved to mortgagor.

notwithstanding." If a power of leasing is to be given to the mortgagor, say, "*Provided also* and it is hereby declared &c. that it shall be lawful for the said (mortgagor) his heirs and assigns from time to time and at all times hereafter during the continuance of this mortgage [*or* 'so long as he shall continue in actual possession of the rents and profits of the said hereditaments and premises'] whether before or after default shall have been made in payment of the monies hereby secured by indentures to be sealed and delivered by him or them in the presence of and attested by one witness or more to limit or appoint by way of demise or lease all or any part of the hereditaments and premises hereby released or otherwise assured or intended so to be which have been usually letten to rent to any person or persons for any term or number of years &c." (See leasing power, *post*, SETTLEMENT.)

Power to mortgagor to fell timber.

If it be agreed that the mortgagor may fell timber, say, "*Provided also* and &c. that he the said (mortgagor) his heirs and assigns shall and may during the continuance &c. [until notice in writing under the hand or hands of the said (mortgagee) his heirs executors administrators or assigns shall be given to him or them to the contrary] fell cut down and carry away all such timber and underwood of full and proper growth which for the time being shall be on the same lands and premises at seasonable and ordinary times."

Mortgagor restrained from felling timber.

If the contrary is agreed upon, then say, "*Provided also* and it is &c. and the said (mortgagor) in particular doth hereby covenant &c. that he the said (mortgagor) his heirs or assigns shall not nor will at any time or times so long as the said principal sum of £ so lent as aforesaid shall remain on the security of the said hereditaments cut down fell sell or dispose of any wood timber or other trees growing and standing on the same hereditaments and premises or any parts thereof (other than such wood timber or other trees only as shall or may from time to time be employed or made use of for in or about the necessary repairs of the said capital messuage &c.) without the consent and approbation of the said (mortgagee) his heirs executors administrators or assigns first had and obtained And also that he the said (mortgagor) his heirs and assigns shall and will from time to time and at all times &c. preserve and keep the said timber and other trees growing and standing upon the said hereditaments and premises or any part thereof free from all damage or injury whatsoever." As to a mortgage with a power of sale (which is seldom omitted), see *post*, pp. 1144—1147; Concise form, pp. 1151—1153; TRUSTS FOR SALE, pp. 1155—1157.

And whereas upon the treaty for the said loan it was agreed that the said (*mortgagor*) his executors or administrators should within the space of years re-transfer the said sum of £ stock into the name of the said (*mortgagee*) his executors administrators or assigns and in the meantime should pay unto the said (*mortgagee*) his executors administrators or assigns such a yearly sum as would be equivalent to the dividends and annual produce which he or they would have received if the said sum of £ had continued standing in his name And that the re-transfer of the said sum of £ and payment of the dividends in the meantime should be secured in manner hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the said sum of £ so paid to the said (*mortgagor*) at &c. by the said (*mortgagee*) the receipt &c. He the said (*mortgagor*) *Doth* hereby grant bargain sell and demise unto the said (*mortgagee*) his executors administrators and assigns *All that* &c. [*parcels, general words*] And all such deeds evidences and writings relating to the said hereditaments and premises or any of them as are now in the possession or power of the said (*mortgagor*) or which he can obtain without suit at law or in equity (*a*) *To have and to hold* the said messuage &c. and all and singular other the premises hereby demised or intended so to be and every part thereof with their appurtenances unto the said (*mortgagee*) his executors administrators and assigns from the day next before the day of the date hereof for and during the full end and term of 1000 years from thence next ensuing and fully to be complete and ended subject to the proviso for redemption hereinafter contained *Provided always* and it is hereby agreed and declared that in case the said (*mortgagor*) his heirs executors or administrators or some or one of them shall and do at his and their own proper costs and charges on the day of next well and truly transfer or cause to be transferred into the name or names of the said (*mortgagee*) his executors administrators or assigns the sum of £ 3 per cent. Consolidated Bank Annuities and shall in the meantime pay to him or them such sum and sums of money as he or they would have been entitled to receive as and for the divi-

No.
CCCCCLIX.
*Of Freeholds by
Demise.*

Agreement to
re-transfer
stock, &c.

Testatum.

Habendum.

Term.

Proviso for
cesser of term.

(a) The clause of all deeds, &c. ought to be inserted in a mortgage for a term of years, as a mortgagee for a term is not, in the absence of an express grant or covenant, entitled to the deeds either before or after foreclosure, as they belong to the freeholder, *Wiseman v. Westland*, 1 Y. & J. 117; *Harper v. Faulder*, 4 Madd. 129; 1 Davidson's Conv. pp. 529, 533, 2nd ed.

No.
CCCCLIX.
*Of Freeholds by
Demise.*

Covenants to
transfer stock.

Seised in fee.

For right to
demise.

Quiet enjoy-
ment.

dends of the said sum of £ 3 per cent. Consolidated Bank Annuities if the same had not been sold at such times and in such manner as such dividends would have been payable without any deduction whatsoever Then and in such case the term of 1000 years hereby granted and demised as aforesaid shall cease determine and be absolutely void And the said (*mortgagor*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns in manner following (that is to say) That he the said (*mortgagor*) his heirs executors or administrators shall and will at his or their own costs on the day of next transfer into the name or names of the said (*mortgagee*) his executors administrators or assigns the sum of £ 3 per cent. Consolidated Bank Annuities and shall in the meantime pay to him or them such sum and sums of money &c. (*as above*) at the times and in manner hereinbefore appointed for payment of the same And also that the said (*mortgagor*) is now seised of the hereditaments hereby demised or intended so to be and the inheritance thereof in fee simple in possession without any manner of contingent proviso trust power of revocation or limitation of any new or other use or uses or any restraint cause matter or thing to alter change charge revoke make void lessen or determine the same And also that the said (*mortgagor*) now hath good right full power and lawful and absolute authority to grant bargain sell and demise the said hereditaments hereby demised or intended so to be with their appurtenances unto the said (*mortgagee*) his executors administrators and assigns for the said term of 1000 years in manner aforesaid and according to the true intent and meaning of these presents And likewise that from and immediately after default shall be made in transfer of the said sum of £ 3 per cent. Consolidated Bank Annuities or any part thereof or in payment of any money intended to be hereby secured contrary to the provisions hereinbefore contained it shall and may be lawful for the said (*mortgagee*) his executors administrators and assigns from time to time and at all times thereafter peaceably and quietly to enter upon and to hold all and singular the said messuage &c. and premises hereby demised or intended so to be with the appurtenances and to receive and take the rents issues and profits thereof for and during all the rest residue and remainder of the said term of 1000 years which shall be then to come and unexpired without the lawful inter-

ruption or disturbance of or by the said (*mortgagor*) his heirs executors or administrators or any other person or persons whomsoever lawfully claiming or to claim by from under or in trust for him or them or any other persons whomsoever *And* that free and clear and freely and clearly and absolutely kept harmless and indemnified from and against all former and other gifts grants leases &c. and incumbrances whatsoever had made done committed or suffered or to be had made done committed or suffered by the said (*mortgagor*) his heirs or assigns or by any other person or persons whomsoever *And further* that he the said (*mortgagor*) and his heirs and all and every persons or person lawfully or equitably having or claiming or who shall or may have or lawfully or equitably claim any estate right title trust or interest in to or out of the hereditaments hereby demised or intended so to be or any part or parts thereof shall and will from time to time and at all times after default shall be made in the transfer of the said sum of £ 3 per cent. Consolidated Bank Annuities or any part thereof or in payment of any monies intended to be hereby secured contrary to the provisions hereinbefore contained at the request of the said (*mortgagee*) his executors administrators or assigns but at the costs and charges of the said (*mortgagor*) his heirs executors or administrators make do acknowledge and execute or cause to be made done acknowledged and executed all and every such further and other lawful and reasonable acts deeds matters and things conveyances and assurances whatsoever for the further better more perfectly and absolutely granting conveying and assuring the same hereditaments with their appurtenances unto the said (*mortgagee*) his executors administrators and assigns for all the then residue and remainder of the said term of 1000 years *And also* for granting conveying and assuring the fee simple and inheritance of the same hereditaments unto and to the use of the said (*mortgagee*) his heirs and assigns or to some other person or persons and his or their heirs in trust for and to be nominated by the said (*mortgagee*) his executors administrators or assigns discharged of the aforesaid proviso and all equity thereupon as by the said (*mortgagee*) his executors administrators assigns or his or their counsel in the law shall be reasonably advised or devised and required *And moreover* it is hereby declared and agreed by and between the parties hereto that in the meantime and until default shall happen to be made in the transfer of the sum of £ 3 per

No.
CCCCCLIX.
*Of Freeholds by
Demise.*

Free from
incumbrances.

Further as-
surance.

Quiet enjoy-
ment until
default.

No.
CCCCLIX.
*Of Freeholds by
Demise.*

cent. Consolidated Bank Annuities or some part thereof or in payment of any monies intended to be hereby secured contrary to the form and effect of the aforesaid proviso and covenant hereinbefore contained it shall and may be lawful for the said (*mortgagor*) his heirs and assigns peaceably and quietly to have hold and enjoy the said messuage &c. and premises hereby granted or demised or intended so to be and every part thereof with their appurtenances and to receive and take the rents issues and profits thereof to and for his and their own use and benefit without the lawful let suit trouble hindrance interruption and denial of or by the said (*mortgagee*) his executors administrators or assigns or any other person or persons whomsoever lawfully claiming or to claim under him or them or any of them [*here add covenant for insuring, see ante, p. 1134, post, pp. 1147, 1148*] *In witness &c.*

No. CCCCLX.

*Freeholds and
Copyholds with
Power of Sale.*

No. CCCCLX.

*Conveyance of Freeholds, and Covenant to surrender Copyholds
by way of Mortgage, with Power of Sale.*

Recitals of
seisin in fee.

This Indenture made the day of in the year
of our Lord Between A. B. of &c. of the one part and
C. D. of &c. of the other part *Whereas* the said A. B. is seised
of or well entitled to the freehold messuages lands and here-
ditaments hereinafter described and intended to be hereby
granted with their appurtenances for an estate of inheritance
in fee simple in possession *And whereas* the said A. B. is

Of agreement
for loan.

seised or well entitled for an estate of inheritance in fee simple
in possession according to the custom of the manor of in
the county of of or to the customary or copyhold lands and
hereditaments hereinafter described and covenanted to be sur-
rendered with their appurtenances *And whereas* the said A. B.
having occasion for the loan of the sum of £ hath applied
to and requested the said C. D. to lend and advance him the same
which he the said C. D. hath agreed to do upon having the re-
payment thereof with lawful interest secured to him upon the
said freehold and customary or copyhold hereditaments in the
manner hereinafter appearing *Now this Indenture witnesseth*
That in consideration of the sum of £ of lawful money &c.
advanced and lent by the said C. D. unto the said A. B. at or

Testatum.

before the sealing and delivery of these presents the receipt of which said sum of £ the said A. B. doth hereby acknowledge and from the same and every part thereof doth acquit release exonerate and discharge the said C. D. his heirs executors administrators and assigns and every of them for ever by these presents he the said A. B. *Doth* by these presents grant alien and confirm unto the said C. D. his heirs and assigns *All* &c. together with all houses &c. and appurtenances whatsoever to the said freehold messuages lands hereditaments and premises belonging or in anywise appertaining or therewith or with any part or parcel thereof held used occupied or enjoyed or accepted reputed deemed taken or known as part parcel or member thereof and the reversion and reversions remainder and remainders yearly and other rents issues and profits thereof and all the estate right title interest use trust property power claim and demand whatsoever at law or in equity of the said A. B. in to or out of the same premises and every or any part thereof *To have and to hold* the said freehold messuages lands hereditaments and all and singular other the premises hereby granted or intended so to be with their appurtenances unto the said C. D. his heirs and assigns to the use and behoof of the said C. D. his heirs and assigns for ever *Subject* nevertheless to the proviso for the redemption of the said premises hereinafter contained (that is to say) *Provided always* and these presents are upon this express condition that if the said A. B. his heirs executors administrators or assigns do and shall well and truly pay or cause to be paid unto the said C. D. his executors administrators or assigns the sum of £ of lawful money aforesaid on the day of now next ensuing with interest for the same after the rate of 5*l.* for every sum of 100*l.* for a year to be computed from the day of the date of these presents without making any deduction or abatement whatsoever thereout for or by reason of any taxes charges assessments payments or impositions whatsoever already or to be at any time or times hereafter taxed charged assessed or imposed upon the said freehold hereditaments and premises or any part thereof or upon the said principal sum of £ or the interest thereof or anywise for or in respect thereof by authority of parliament or otherwise howsoever Then and in such case the said C. D. his heirs or assigns shall and will at any time or times after such payment shall have been made as aforesaid upon the request and at the costs and charges of the said A. B. his heirs or assigns reconvey and reassure all and singular the said freehold

No. CCCCLX.
*Freeholds and
Copyholds with
Power of Sale.*

Conveyance of
freeholds.

Proviso for re-
demption.

No. CCCCLX. *Freeholds and Copyholds with Power of Sale.* messuages lands hereditaments and premises hereby granted or intended so to be with their appurtenances unto and to the use of the said A. B. his heirs and assigns for ever or to such person or persons and to for and upon such estate and estates uses trusts intents and purposes as he or they shall direct or appoint free from all incumbrances whatsoever to be had made done or committed in the meantime by him the said C. D. his heirs executors or administrators or by any person or persons whomsoever lawfully or equitably claiming or to claim by from or under him them or any of them *And this Indenture also witnesseth* and for the consideration aforesaid the said A. B. for himself his heirs executors and administrators *Doth* hereby covenant and agree with the said C. D. his heirs executors administrators and assigns that he the said A. B. or his heirs and all other proper and necessary parties shall and will at his or their own proper costs and charges at the next or some subsequent general or special court baron to be holden for the manor of aforesaid or out of court upon the request of the said C. D. his heirs executors administrators or assigns well and effectually surrender into the hands of the lord or lady lords or ladies for the time being of the said manor of and according to the custom of the same manor *All &c.* with the appurtenances to the same premises belonging and appertaining and the reversion and reversions remainder and remainders thereof and all his and their right title estate and interest in to or out of the same customary or copyhold hereditaments and premises to the use of the said C. D. his heirs and assigns for ever according to the custom of the manor of aforesaid *Subject* nevertheless to a proviso or condition to be contained in the said surrender for making void the same on payment by the said A. B. his heirs executors administrators or assigns unto the said C. D. his executors administrators or assigns of the said sum of £ with interest for the same after the rate at the time and in manner hereinbefore mentioned and appointed for payment thereof clear of all taxes and deductions whatsoever *And* the said A. B. for himself his heirs executors and administrators doth hereby covenant and agree with the said C. D. his executors administrators and assigns that he the said A. B. his heirs executors or administrators shall and will well and truly pay or cause to be paid unto the said C. D. his executors administrators or assigns the said sum of £ with interest for the same after the rate on the day and in manner hereinbefore mentioned without any deduction or abatement whatsoever accord-

Covenant to
surrender
copyholds.

Covenant to
pay money.

ing to the true intent and meaning of these presents *And also* that he the said A. B. his heirs executors or administrators shall and will repay unto the said C. D. his executors administrators or assigns on demand all and every such sum or sums of money as he or they shall or may pay and advance by way of fine fees of court or otherwise upon or in relation to any admittance of him the said C. D. his heirs or assigns at any time hereafter to all or any part of the said copyhold hereditaments and premises under and by virtue of the surrender to be made thereof pursuant to the covenant in that behalf hereinbefore contained with lawful interest for the said last-mentioned sum or sums of money from the time or times the same shall be so advanced (a) *And* the said A. B. for himself his heirs executors administrators and assigns doth further covenant and agree with the said C. D. his heirs and assigns by these presents in manner following (that is to say) That he the said A. B. now at the time of the sealing and delivery of these presents is and standeth lawfully and rightfully seised of and well entitled to the said freehold messuages lands hereditaments and premises hereby granted or intended so to be and every part thereof with their appurtenances for a good sure perfect lawful absolute and indefeasible estate of inheritance in fee simple in possession and of and in the said customary or copyhold lands hereditaments and premises hereinbefore covenanted to be surrendered with their appurtenances for a like estate of inheritance in fee simple in possession according to the custom of the manor of aforesaid without any manner of condition trust power of revocation limitation of use or uses or any other restraint cause matter or thing whatsoever to alter change defeat revoke make void lessen or determine the same estates respectively *And also* that he the said A. B. now hath in himself at the time of the sealing and delivery of these presents good right full power and lawful and absolute authority to grant surrender and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and covenanted to be surrendered with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever in manner aforesaid according to the true intent and meaning of these presents *And* moreover that it shall and may be lawful for the said C. D. his heirs and assigns from time to time and at all times from and

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Expenses of
admission, &c.,
to copyholds.

Covenants for
title.

(a) The last covenant is taken from 2 Scriv. on Copyholds, p. 871, 4th ed. See *post*, p. 1146, n.

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after default shall happen to be made in payment of the said principal sum of £ or any part thereof or the interest thereof or any part thereof contrary to the true intent and meaning of these presents and the parties hereunto peaceably and quietly to enter into and upon have hold occupy possess and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and covenanted to be surrendered with their appurtenances and to receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any lawful let suit trouble molestation eviction ejection interruption or disturbance whatsoever of from or by the said A. B. his heirs or assigns or of from or by any other person or persons whomsoever and that free and clear and freed and absolutely acquitted exonerated and discharged or otherwise by the said A. B. his heirs executors and administrators well and effectually saved defended kept harmless and indemnified of from and against all and all manner of former and other gifts grants bargains sales leases mortgages settlements jointures dower freebench rents annuities uses trusts wills intails statutes judgments recognizances forfeitures escheats extents executions and of from and against all and singular other estates titles charges and incumbrances whatsoever *And further* that he the said A. B. and his heirs and all and every other persons and person having or lawfully or equitably claiming or to claim any estate right title trust or interest in to or out of the said freehold and customary or copyhold hereditaments and premises hereby granted and covenanted to be surrendered shall and will from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £ or any part thereof or the interest thereof or any part thereof contrary to the true intent and meaning of these presents and the parties hereunto upon the request of the said C. D. his heirs executors administrators or assigns but at the proper costs and charges in the law of the said A. B. his heirs executors administrators or assigns until the said hereditaments shall have been sold and conveyed under or by virtue of the power of sale hereinafter contained or until the right or equity of redemption therein under or by virtue of these presents shall have been foreclosed or otherwise barred or extinguished and thenceforth at the costs and charges of the person or persons requiring the same make do and execute or cause and procure to be made done and executed all and every such further and other lawful and reasonable acts

conveyances surrenders and assurances in the law whatsoever for the further better more perfectly and absolutely granting conveying surrendering and assuring all and singular the same freehold and customary or copyhold hereditaments and premises with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever freed and absolutely discharged from the proviso or condition for redemption hereinbefore contained and intended to be contained in the surrender so to be made of the said customary or copyhold hereditaments and premises as aforesaid and of and from all right power and equity of redemption whatsoever but nevertheless as to the said customary or copyhold premises subject and according to the custom of the manor of aforesaid as by the said C. D. his heirs executors administrators or assigns or his or their counsel in the law shall be devised or advised and required *And* it is hereby agreed and declared That if default shall be made in payment of the said principal sum of £ OR the interest thereon or any part thereof respectively on the said day of it shall be lawful for the said C. D. his executors administrators or assigns at any time or times after such default without any further consent on the part of the said A. B. his heirs or assigns to make sale of the said hereditaments and premises hereinbefore expressed to be hereby granted and hereinbefore covenanted to be surrendered or any part or parts thereof either together or in parcels and either by public auction or private contract with full power upon any such sale to make any stipulations as to title or evidence or commencement of title or otherwise which the said C. D. his executors administrators or assigns shall deem proper and also with full power to buy in or rescind or vary any contract for sale of the said premises or any part thereof and to resell the same without being responsible for any loss which may be occasioned thereby *And* for the purposes aforesaid or any of them to make and execute all such agreements and assurances as he or they shall think fit (a) *And* it is hereby agreed and declared That upon any sale under the power of sale hereinbefore contained by the executors or administrators of the said C. D. or by any other person or persons who may not be seised of the legal estate in the premises sold the heirs of the said C. D. or any other person or persons in whom the legal estate of the same premises shall be vested shall make such assurances of the same for the purpose of

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Power of sale
in case of de-
fault in pay-
ment.

If sale made by
executors, &c.,
person having
legal estate to
join.

(a) See *Davey v. Durrant*, 1 De G. & J. 535.

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Freeholds and Copyholds with Power of Sale.

Six months' notice of exercise of power to be given.

Purchasers exempted from inquiry.

Proviso in power of sale of leaseholds where mortgage is by underlease.

(a) In the case of a mortgage of a term of years by *underlease*, the following proviso should be added :—" *And* it is hereby agreed and declared that after any sale or sales shall have been made under this present power of sale the said (*mortgagor*) his executors administrators or assigns shall stand possessed of and interested in the said ten days [*or* 'one day'] of the said term of years left in the said (*mortgagor*) by way of reversion as hereinbefore is mentioned in trust for the purchaser or purchasers of the premises comprised in the said term and to assign and dispose of the same as such purchaser or purchasers shall direct." See 2 Davidson's Conv. pp. 589, 590, 822, 2nd ed. ; *post*, pp. 1174, *et seq.*

aforesaid power in that behalf and to be valid and effectual accordingly and the remedy of the said A. B. his heirs or assigns in respect of any breach of the clause or provisions lastly hereinbefore contained or of any impropriety or irregularity whatsoever in any such sale shall be in damages only *And* it is hereby also agreed and declared that upon any such sale as aforesaid the receipt or receipts in writing of the said C. D. his executors administrators or assigns for the purchase money of the premises sold shall be an effectual discharge or discharges to the purchaser or purchasers for the money therein respectively expressed to be received and that the purchaser or purchasers shall not be concerned to see to the application of his or their purchase money or be answerable for any loss misapplication or nonapplication thereof *And* it is hereby further agreed and declared that the said C. D. his executors administrators and assigns shall hold the monies which shall arise from any sale made in pursuance of the aforesaid power in that behalf upon trust in the first place by with or out of the same monies to reimburse himself or themselves or pay or discharge all the costs and expenses incurred in or about such sale or otherwise in respect of the premises *And* in the next place to apply such monies in or towards satisfaction of all and singular the monies for the time being due or owing on the security of these presents including such sum and sums of money (if any) as shall be due and owing to the said C. D. his executors administrators or assigns in respect of any monies to be paid or advanced by him or them for admittance (if any) to the said copyhold premises or for effecting or keeping on foot any insurance or insurances against loss or damage by fire under the provision in that behalf hereinafter contained and then to pay the surplus (if any) of the said monies which shall arise from such sale unto the said A. B. his heirs or assigns (a) *Provided* nevertheless that these presents

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Freeholds and Copyholds with Power of Sale.

Receipts of mortgagee to discharge purchasers.

Trusts of monies to arise from sale.

Limit of amount.

(a) *Provided also* and it is hereby further declared that it shall be lawful for the said (*mortgagee*) his heirs executors administrators or assigns in the execution of the power of sale hereinbefore contained to sell the several hereditaments comprised in the said recited indentures (*the prior mortgages*) of the day of and the day of respectively either subject to or discharged from the respective mortgages thereby made or either of them and in case the same hereditaments and premises respectively or any part thereof shall be sold or discharged from the said mortgages respectively then to apply a competent part or parts of the money to arise from the sale or sales of the same hereditaments and premises or of any other hereditaments and premises to be sold under the power hereinbefore contained in or towards payment and satisfaction of such mortgage or mortgages and that he the said

Proviso in power of sale where the estate is subject to previous mortgages.

No. CCCCLX, shall not be a security at any one time for more principal money than the sum of £ sterling (a) And it is hereby also agreed and declared that the aforesaid power of sale may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the monies for the time being due or owing on the security of these presents *Provided also* and it is hereby agreed and declared that the aforesaid power of sale or anything herein contained shall not in anywise prejudice or affect the right of foreclosure *Provided always* and it is hereby agreed and declared that the said C. D. his executors administrators or assigns shall not be answerable or accountable for any involuntary losses which may happen in or about the exercise or execution of the aforesaid power and trusts or any of them And the said A. B. doth hereby for himself his heirs executors and administrators further covenant with the said C. D. his heirs executors administrators and assigns That the said A. B. his heirs executors administrators or assigns shall and will from time to time during the continuance of the security intended to be made by these presents at his or their proper costs and charges insure and keep insured the said messuages and other buildings hereinbefore granted or intended so to be and hereinbefore covenanted to be surrendered in some insurance office or offices in London or Westminster against loss or damage by fire to the amount of £ at the least and deliver over the policy or policies and receipt for the premium in the current year And that in case the said A. B. his heirs executors administrators or assigns shall neglect or refuse to make or keep on foot any such insurance or insurances it shall be lawful for the said C. D. his executors administrators or assigns at any time or times to insure or keep insured the said messuages and other buildings respectively or any of them in the sum of £ or

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Power of sale to be exercised by person entitled to mortgage money.

Mortgagee not to be answerable for involuntary losses.

Covenant to insure against fire.

(mortgagee) his heirs executors administrators and assigns shall have full discretionary power and authority to take such measures and make such arrangements in relation to the said mortgages either by paying off the same and taking transfers or assignments thereof or otherwise as shall be deemed necessary or convenient for strengthening or improving the security hereby made or facilitating the execution of the said power of sale and to pay and defray all the costs charges and expenses incident to such measures or arrangements out of the monies which shall come to his or their hands by virtue of these presents. See 2 Hayes on Conv., p. 122, n. (115), 5th ed.; *Manser v. Dix*, 3 Jur., N. S. 252, ante, p. 1126.

(a) It may be advisable to limit the amount on account of the expenses of admission to the copyholds and to affix a stamp sufficient to cover such expenses besides the sum advanced. See ante, pp. 1127, 1128.

any less sum against loss or damage by fire in any office or offices for insurance in London or Westminster and to pay all the expenses of effecting any such insurance or insurances and all the annual premium or premiums and duty sum and sums of money which shall from time to time become payable for keeping such insurance or insurances on foot And that he the said A. B. his heirs executors administrators or assigns shall and will from time to time within one calendar month next after any sum or sums of money shall have been paid or advanced by the said C. D. his executors administrators or assigns in or towards payment of any such premium or premiums duty sum or sums of money or expenses repay or cause to be repaid to the said C. D. his executors administrators or assigns such sum or sums of money respectively with interest for the same respectively after the rate aforesaid from the time or respective times of paying or advancing the same respectively And that in the meantime and until such sum or sums of money shall be so repaid with interest as aforesaid the said hereditaments and premises hereinbefore granted or intended so to be and hereinbefore covenanted to be surrendered shall stand and be chargeable therewith and shall not be redeemed or redeemable until full payment thereof respectively And in case of nonpayment of the same or any part thereof respectively with such interest for the same as aforesaid within one calendar month next after the same respectively shall be so paid or advanced as aforesaid the power of sale hereinbefore contained shall or may be exercised in such and the same manner as if the same had become exercisable under the provision hereinbefore contained And it is hereby agreed and declared that in case the said messuages and other buildings or any of them or any part thereof shall at any time or times during the continuance of this security be burnt down destroyed or damaged by fire then and in such case and as often as the same shall happen all such sum and sums of money as shall or may be received or recoverable upon or by virtue of any insurance or insurances against loss or damage by fire shall be laid out and expended in the rebuilding or repairing the said messuages and other buildings or such part thereof as shall be burnt down destroyed or damaged by fire as aforesaid or be retained and applied in or towards the discharge of the monies due or to become due on this present security [*Proviso for quiet enjoyment until default, ante, p. 1133, see Pref. sect. 9, p. 1124, and p. 1134, n. (a)*] *In witness &c.*

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Appointment of a Receiver to secure Rents to Mortgagee in Fee,
No. CXXIV., pp. 270—274.

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No. CCCCLXI.

*Mortgage by Appointment and Grant, with Power of Sale
(Concise Form).*

Obs. As to the mortgage with a power of sale, see Pref. sect. 10, p. 1126; and as to the stamp, see *ante*, pp. 1126—1128.

Recitals.

This Indenture made &c. Between (Appointor and Mortgagor) of &c. of the one part (Mortgagee) of &c. of the other part Whereas by an Indenture dated &c. (a) the messuages or tenements lands and hereditaments hereinafter described and intended to be hereby appointed and granted or otherwise assured do now stand limited To the use of such person or persons &c. [the usual uses to bar dower in favour of mortgagor] And whereas the said (A.) hath contracted with the said (mortgagee) for the loan of £ to be secured as hereinafter mentioned Now this Indenture witnesseth That in consideration of the sum of £ by the said (M.) at &c. to the said (A.) paid the receipt &c. Doth hereby for himself his heirs &c. [Covenant to pay principal money and interest, see ante, pp. 1132, 1142] And this Indenture also witnesseth That in further pursuance of the said agreement and for consideration aforesaid He the said (A.) (b) by virtue and in pursuance and exercise of the power to him given by the said in part recited indenture and of all other powers and authorities in him vested or in anywise enabling him in this behalf by this present deed or instrument in writing sealed and delivered by him in the presence of the two persons whose names are intended to be hereon indorsed attesting his sealing and delivery thereof Doth direct

(a) Or, “Whereas by indentures of lease and release bearing date respectively the days of the release being made between &c. (vender) of &c. of the first part the said (mortgagor) of &c. of the second part and the said (trustees) of the third part the fee simple in possession of the hereditaments hereinafter described stands limited to such uses as the said (mortgagor) shall by any deed or deeds appoint and in default of such appointment to the use of the said (mortgagor) and his assigns during his” &c. (*as above*.)

(b) Or, more concisely, “In execution of the powers to him given by the said in part recited indentures and of every other power enabling him in this behalf Doth appoint that All the said hereditaments hereinafter described with the appurtenances shall henceforth remain To the use of the said (mortgagee) his heirs and assigns,” &c.

limit and appoint that the said messuages or tenements lands and hereditaments with their appurtenances shall henceforth remain continue and be and that the hereinbefore recited indenture of release shall operate and enure *To the use* of the said (*M.*) his heirs and assigns for ever *Subject nevertheless* to the proviso or agreement for redemption hereinafter contained *And this Indenture further witnesseth* That in further pursuance of the said recited agreement and in consideration of the premises and by way of further assurance He the said (*mortgagor*) (*a*) *Doth* hereby grant and convey unto the said (*mortgagee*) his heirs and assigns *All those* messuages &c. (*parcels*) Together with all &c. [*general words*, see PURCHASE DEEDS (*b*)] *To have and to hold* the said messuages &c. And all and singular other the premises hereby appointed and granted or intended so to be with their appurtenances unto and to the use of the said (*mortgagee*) his heirs and assigns *Subject nevertheless* to the proviso or agreement for redemption hereinafter contained *Provided always* and it is hereby declared &c. that if the said (*mortgagor*) his heirs executors or administrators or some or one of them do and shall &c. pay &c. unto the said (*mortgagee*) his executors &c. Then and in that case [*Proviso for redemption and covenants for payment*, see *ante*, pp. 1132, 1133] *And* the said (*mortgagor*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his heirs and assigns that he the said (*mortgagor*) now hath good right full power and lawful authority to direct limit and appoint and also to grant the said messuages &c. and all and singular the said hereditaments and premises with their and every of their rights members and appurtenances to the use of the said (*mortgagee*) his heirs and assigns in manner aforesaid according to the true intent and meaning of these presents *And* that if default shall be made in payment of the said sum of £ or any interest for the same or any part thereof it shall be lawful for the said (*mortgagee*) his heirs and assigns to enter into and upon the said hereditaments and premises and the same from thenceforth to hold occupy and enjoy and to receive and take the rents issues and profits thereof

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Further testatam.

Grant.

General words.

Proviso for redemption, and covenant for payment of interest.
Covenants for title.

(*a*) As to the non-concurrence of the dower trustee, see *post*, PURCHASE DEEDS, Conveyance by Appointment and Grant, n.

(*b*) Or simply, "Together with all rights members and appurtenances thereunto belonging And also all the estate right title and interest of the said (*mortgagor*) in and to the said hereditaments and premises And all deeds and writings relating to his title to the said hereditaments and premises or any part thereof."

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Power of sale.

without any interruption or disturbance by the said (*mortgagor*) his heirs or assigns or any other person or persons And that free and discharged or otherwise by the said (*mortgagor*) sufficiently save defended and indemnified against all estates and incumbrances whatsoever And moreover that he the said (*mortgagor*) and his heirs and every other person having or lawfully or equitably claiming or to claim any estate right title interest property claim or demand of in or to the said premises or any part thereof will from time to time and at all times upon the request of the said (*mortgagee*) his heirs executors administrators or assigns but at the cost of the said (*mortgagor*) his executors or administrators until the said hereditaments shall be sold and conveyed under the power of sale hereinafter contained or the equity of redemption by virtue of these presents shall be foreclosed or extinguished and thenceforth at the cost of the person or persons requiring the same do and execute every such act deed and assurance for further assuring the said hereditaments and premises to the use of the said (*mortgagee*) his heirs and assigns as by the said (*mortgagee*) his heirs executors administrators or assigns shall be reasonably required And it is hereby agreed and declared that if default shall be made in payment of the said sum of £ or the interest thereon or any part thereof respectively at the time hereinbefore appointed for the payment of the same respectively it shall be lawful for the said (*mortgagee*) his executors administrators or assigns without any further consent on the part of the said (*mortgagor*) his heirs or assigns to make sale of the said hereditaments and premises hereby appointed and granted or intended so to be or any part or parts thereof either together or in parcels and either by public auction or private contract And with full power and lawful and absolute authority for the said (*mortgagee*) his executors administrators or assigns to make any stipulations as to title or evidence of title or otherwise as he or they shall deem necessary And it is hereby agreed and declared that upon any sale under the power of sale hereinbefore contained by the executors administrators or assigns of the said (*mortgagee*) or by any other person or persons who may not be seised of the legal estate in the premises sold the heirs of the (*mortgagor*) or any other person or persons in whom the legal estate of the same premises shall be vested shall make such assurances of the same for the purpose of carrying the sale thereof into effect as the person or persons by whom the sale shall be made shall direct *Provided always* and it is hereby expressly

Six months'

declared &c. that no sale or mortgage shall be made under any of the provisions hereinbefore contained unless and until six calendar months' previous notice in writing of the same be given to the said (*mortgagor*) his heirs or assigns or left for him or them or unless and until some half-yearly payment of interest shall be in arrear for the space of three months from the time hereinbefore appointed for payment thereof *Provided also* that every notice to be given or left as aforesaid shall be valid and effectual though not addressed to any person by name or designation but generally to all whom it may concern and that notwithstanding the person or persons to be affected by such notice shall be absent unborn unascertained or under disability *Provided always* that no purchaser shall be bound to see or inquire whether either of the cases mentioned in the clause or provision lastly hereinbefore contained has happened or whether any money remains on the security of these presents or as to the necessity or expediency of the stipulations subject to which such sale shall have been made or as to the propriety or regularity of such sale And notwithstanding any impropriety or irregularity in such sale the same shall as far as regards the safety and protection of the purchaser or purchasers be deemed to be within the aforesaid power in that behalf and be valid and effectual accordingly and the remedy of the said (*mortgagor*) his heirs or assigns in respect of any breach of the clause or provision lastly hereinbefore contained or of any impropriety or irregularity in any such sale shall be in damages only And it is hereby declared that upon any such sale the receipt or receipts in writing of the said (*mortgagee*) his executors administrators or assigns shall be a sufficient discharge for the money in such receipt or receipts expressed or acknowledged to be received And that no such purchaser shall be bound to see to the application of his or her purchase money or be answerable for any loss nonapplication or misapplication thereof And it is hereby agreed and declared that the said (*mortgagee*) his executors administrators and assigns shall hold the monies to arise from any sale made in pursuance of the aforesaid power in that behalf *Upon trust* in the first place to pay or retain thereout all costs and expenses incurred in or about such sale or in relation to the premises and in the next place to apply such monies in or towards satisfaction of the monies for the time being due on the security of these presents and then to pay the surplus (if any) of the monies to arise from such sale to the said (*mortgagor*) his heirs or assigns

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notice to be
given to mort-
gagor.

Purchaser
exempted from
inquiry, &c.

Receipt of
mortgagee for
the purchase
money to be a
discharge.

Trusts of pur-
chase money.

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with Power of
Sale.*

Mortgagee not
to be answer-
able for invo-
luntary losses.

And it is hereby declared that the aforesaid power of sale may be exercised by any person for the time being entitled to receive and give a discharge for the monies due on the security of these presents And it is hereby declared that nothing herein contained shall affect the right of foreclosure And it is hereby declared that the said (*mortgagee*) his executors administrators or assigns shall not be answerable for any involuntary losses which may happen in or about the execution of the aforesaid power and trusts or any of them *In witness &c.*



No.
CCCC LXII.

*Of Freeholds
with Trusts for
Sale.*

No. CCCCLXII.

Mortgage in Fee to Bankers with Trusts for Sale, for securing Money already advanced, or which may in future be advanced (a).

Obs. As to a mortgage with trusts for sale, see Pref. sect. 11, *ante*, p. 1126; as to the stamp, see sect. 12, pp. 1126—1128.

Recital of dis-
count of bills,
&c., by mort-
gagee.

Contract for
mortgage.

Covenant to
pay money due
and future
advances.

This Indenture made &c. Between (mortgagor) of &c. of the one part and (mortgagees) bankers and copartners of the other part Whereas the said (mortgagees) have at the request of the said (mortgagor) and for his use and benefit on the day of the date of these presents discounted certain bills of exchange to the amount of £ and may hereafter make further advances unto or by the direction of the said (mortgagor) And whereas for the more effectually securing payment as well of the said sum of £ as of all such further sums as the said (mortgagor) shall owe or become liable to pay unto them with interest for the same as hereinafter is mentioned the said (mortgagor) hath agreed to enter into the covenant hereinafter contained and to convey and assure the messuages or tenements lands and hereditaments hereinafter described unto the said (mortgagees) upon the trusts hereinafter declared concerning the same Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the said sum of £ now owing to the said (mortgagees) upon the balance of the said account between them and the said (mortgagor) He the said (mortgagor)

(a) See No. CCLXXIII., *ante*, pp. 544—546, bond for securing running account with bankers.

doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagees*) and each of them and their and each of their executors and administrators that he the said (*mortgagor*) his heirs executors or administrators shall and will upon demand for that purpose made by the said (*mortgagees*) or the survivors or survivor or the executors or administrators of such survivor or the persons or person for the time being carrying on their banking business at aforesaid well and truly pay or cause to be paid unto the said (*mortgagees*) or the survivors or survivor of them or the executors or administrators of such survivor or the persons or person for the time being carrying on their said banking business all such sum or sums of money as shall for the time being be due and owing to them or him from the said (*mortgagor*) his executors or administrators for or in respect of any monies which have already been or which shall or may be hereafter advanced or paid by the said (*mortgagees*) or the survivors or survivor of them or the executors or administrators of such survivor or the persons or person for the time being carrying on their said banking business as aforesaid to the said (*mortgagor*) or on his account or by his direction or in honouring his drafts or in paying any bills of exchange or promissory notes which shall have been given drawn accepted or indorsed by him the said (*mortgagor*) or upon any account whatsoever (not exceeding in the whole the sum of £) with interest for the same after the rate of £5 for every £100 by the year to be computed from the time or respective times of advancing or paying the same and shall and will make the said payments without any deduction or abatement out of the same or any part thereof for or in respect of any present or future taxes rates assessments or impositions or any other matter cause or thing whatsoever (except the income or property tax) And it is hereby agreed and declared that each demand as aforesaid may be made upon or against the said (*mortgagor*) his heirs executors or administrators either personally or by delivering at his or their dwelling house or place of abode for the time being a notice in that behalf for or on behalf of the said (*mortgagees*) or the survivors or survivor of them or the executors or administrators or assigns of such survivor or the persons or person for the time being carrying on the said banking business And this Indenture further witnesseth That in pursuance of the said agreement and in consideration of the said sum of £ now owing to the said

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Demand how
to be made.

Testatum.

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*Of Freeholds
with Trusts for
Sale.*

Habendum.

Upon trust.

To sell.

(*mortgagees*) upon the balance of the said account between them and the said (*mortgagor*) He the said (*mortgagor*) *Doth* by these presents grant and convey unto the said (*mortgagees*) their heirs and assigns *All those* messuages or tenements [*description of parcels*] And all houses [*general words*] And all the estate &c.

To have and to hold the said messuages &c. and all and singular other the premises hereby granted or intended so to be with their appurtenances unto and to the use of the said (*mortgagees*) their heirs and assigns *Nevertheless* upon the trusts and to and for the intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) If the principal monies and interest hereby covenanted to be paid as aforesaid shall be paid in manner hereinbefore mentioned without any deduction or abatement whatsoever and according to the true intent and meaning of these presents then and in such case upon trust that the said (*mortgagees*) or the survivors or survivor of them or the heirs of such survivor their or his assigns do and shall at the request costs and charges of the said (*mortgagor*) his heirs or assigns reconvey the said messuages or tenements &c. hereby granted or intended so to be with their appurtenances unto the said (*mortgagor*) his heirs or assigns or as he or they shall in that behalf order or direct free from all incumbrances whatsoever made done or committed by the said (*mortgagees*) or any or either of them their or any or either of their heirs executors administrators or assigns so as for the doing thereof they or any of them be not compelled or compellable to go or travel from the place or places of their or any of their usual abode or dwelling But if default shall be made in payment of the said principal monies and interest hereby covenanted to be paid as aforesaid or any part thereof respectively then and in such case *Upon trust* that they the said (*mortgagees*) or the survivors or survivor of them or the heirs of such survivor their or his assigns do and shall at any time or times thereafter without any further or other authority or direction of or from the said (*mortgagor*) his heirs executors administrators or assigns absolutely sell and dispose of the same hereditaments either entirely and altogether or in parcels and either by public auction or private contract for such price or prices as to them or him shall seem reasonable with power to buy in the said premises or any part thereof at any sale or sales by auction and to rescind abandon or vary any contract for sale and to resell the premises which shall be so

bought in or the contract for sale of which shall be so rescinded or abandoned as aforesaid or any part thereof without being in anywise answerable for any difference of price or loss which may happen thereby respectively and also with power to insert any special or other stipulations in any contract for or conditions of sale either as to title or evidence of title or otherwise and with power for the purposes aforesaid to enter into make execute do and perform all such contracts covenants agreements conveyances assurances acts deeds matters and things as to them or him shall seem reasonable *And* it is hereby agreed and declared by and between the parties hereto that until such sale or sales shall be made or completed as aforesaid the said (*mortgagees*) or the survivors or survivor of them and the heirs of such survivor their or his assigns do and shall receive and take the rents and profits of the said premises or the unsold part or parts thereof and do and shall stand and be possessed of and interested in the same rents and profits and after such sale or sales shall stand possessed of and interested in the monies to arise from and to be produced by such sale or sales and of all other monies which shall come to their hands by virtue of these presents upon the trusts following namely *Upon trust* in the first place to pay and satisfy or retain all the costs and expenses attending such sale or sales or otherwise to be incurred in or about the execution of the trusts herein contained or in anywise relating thereto and in the next place to pay and satisfy the said (*mortgagees*) or the survivors or survivor of them or the executors or administrators of such survivor their or his assigns or the person or persons for the time being carrying on the said banking business all such sum and sums of money as for the time being shall be due upon the security of these presents *And* after full payment and satisfaction thereof to pay the surplus if any of the said monies unto the said (*mortgagor*) his heirs and assigns or as he or they shall appoint and direct *And* upon further trust to convey and assure unto and to the use of the said (*mortgagor*) his heirs and assigns or as he or they shall direct the fee simple and inheritance of such parts of the hereditaments hereby granted or intended so to be as shall remain unsold freed and discharged from all estates charges and incumbrances to be created by the said (*mortgagees*) or any or either of them their or any or either of their heirs executors administrators or assigns in the meantime *And* it is hereby agreed and declared that the receipts of the said (*mortgagees*) or the survivors or survivor

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*Of Freeholds
with Trusts for
Sale.*

Stand pos-
sessed of pro-
ceeds.

Upon trust, &c.

Receipts of
mortgagees to
be good, &c.

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*Of Freeholds
with Trusts for
Sale.*

Mortgagees
not to be liable
for losses.

Declaration
that money is
advanced on
partnership
account, and
concurrence of
executors, &c.,
of deceased
partners un-
necessary (a).

of them or the executors or administrators of such survivor their or his assigns for the purchase money of the premises sold or for any rents or profits thereof until sale shall effectually discharge the purchaser or purchasers and any tenants of the said hereditaments to whom the same shall be given from being concerned to see to the application of the money in such receipts expressed to be received and from being answerable for any loss or misapplication thereof and that it shall not be necessary for any purchaser or purchasers under the trusts aforesaid to inquire or ascertain whether any default has been made in payment of any principal money and interest intended to be hereby secured at the time hereinbefore appointed for the payment thereof or whether any money remains on the security of these presents or to inquire as to the necessity for or expediency of any such sale *Provided also* and it is hereby agreed and declared that the said (*mortgagees*) or any of them their or any of their executors administrators or assigns shall not be answerable or accountable for any involuntary losses which may happen in or about the execution of the aforesaid trusts for sale or any of them *Provided always* and the said (*mortgagees*) hereby severally declare that the money advanced or to be advanced to the said (*mortgagor*) as aforesaid has been or is to be advanced out of money belonging to them on their partnership account and that in case any one or more of them shall die in the lifetime of the other or others of them then the whole of the sum or sums of money for the time being owing on the security of these presents shall be payable and paid to the survivors or survivor or the executors or administrators of such survivor of them or their or his assigns as part of their or his partnership effects and without the concurrence of the executors administrators or assigns of such one or more of them the said (*mortgagees*) as shall have first departed this life any rule of law or equity to the contrary notwithstanding [*Covenants by Mortgagor for Title and further Assurance*] *In witness &c.*

(a) See other Forms of Declarations, *ante*, p. 819, *post*, p. 1160, and n.

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*Miscellaneous Clauses in Mortgages (a).*No.
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Provided always and it is hereby agreed and declared That if the said (*mortgagor*) his heirs executors administrators or assigns shall pay or cause to be paid to the said (*mortgagee*) at his dwelling house situate at aforesaid or unto his executors administrators or assigns the said sum of £ of lawful money of Great Britain with interest for the same after the rate of £5 for every £100 by the year upon the day of now next ensuing without any deduction or abatement whatsoever *And also* if the said (*mortgagor*) shall at any time hereafter become indebted to the said (*mortgagee*) his executors or administrators in any sum or sums of money and the said (*mortgagor*) his heirs executors or administrators shall and will on demand of the person or persons entitled to the same pay or cause to be paid to the said (*mortgagee*) his executors administrators and assigns all and every the sums and sum of money in which the said (*mortgagor*) shall become indebted as aforesaid together with interest after the rate aforesaid from the time or respective times of the same respectively becoming due without any deduction or abatement whatsoever Then the said (*mortgagee*) or his heirs or assigns shall at any time after such payments shall be so made upon the request and at the expense of the said (*mortgagor*) his heirs or assigns reconvey the said messuage tenement and hereditaments hereby granted or intended so to be with their appurtenances unto the said (*mortgagor*) his heirs and assigns or to such other uses and in such manner as he or they shall direct free from all incumbrances whatsoever committed by the said (*mortgagee*) his heirs executors administrators or assigns *And* the said (*mortgagor*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) his executors administrators and assigns That the said (*mortgagor*) his heirs executors or administrators shall and will pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns the sum of £ of lawful money of Great Britain on the day of which will

Proviso for redemption on payment of money and future advances (b).

Covenants to pay mortgage money,

(a) It is scarcely necessary to observe that most of these clauses are not connected with each other, and are intended to form part of other mortgage deeds, as occasion may require.

(b) See *Rolt v. Hopkinson*, 4 Jur., N. S. 1119; 28 L. J., Ch. 41.

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and future
advances.

To make all
payments
without any
deduction.

Declaration
that money is
advanced on
a joint ac-
count (a).

be in the year 186 and shall and will henceforth during so long as the said sum of £ or any part thereof shall remain due and owing on the security of these presents pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns interest for the said sum of £ or for so much thereof as for the time being shall remain unpaid after the rate of £ for every £100 for a year by equal half-yearly payments on the day of and the day of in every year *And also* that the said (*mortgagor*) his heirs executors or administrators shall and will at any time and from time to time on demand in writing signed by the said (*mortgagee*) his executors administrators or assigns and left at the dwelling house for the time being of the said (*mortgagor*) his heirs executors or administrators pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns all and every other sum and sums of money which may at any time or times hereafter be lent advanced or paid by the said (*mortgagee*) his executors or administrators to or for the use or on the account of the said (*mortgagor*) his executors or administrators with interest for the same sum or sums of money respectively after the rate aforesaid from the time or respective times of the same respectively being advanced lent or paid or becoming due as the case may be so as that the amount of money to be recovered hereupon shall not exceed the sum of £ in the whole *And* shall and will make all and every the said payments and payment without any deduction or abatement whatsoever out of the same in respect of any present or future taxes charges assessments or impositions or any other matter cause or thing whatsoever (except the income or property tax) *Provided always* and the said (*mortgagees*) do hereby declare That the said £ hereinbefore mentioned to have been advanced and lent by them was lent and advanced by them out of money belonging to them upon a joint account *And also* direct that in the event of the

(a) If two persons advance money jointly on mortgage, and one of them die, the debt will at law belong to the survivor, but in equity there will be a tenancy in common, and, therefore, in paying off the mortgage the concurrence of the personal representatives of the deceased mortgagee is necessary to give a valid discharge to the purchaser, *Petty v. Steward*, 1 Ch. R. 31; *Vickers v. Cowell*, 3 Jur. 864; 1 Beav. 529; Coote on Mortg. 532. To obviate the necessity of such concurrence, the above declaration is usually inserted where money is lent by trustees. See other forms of similar declarations, *ante*, pp. 819, 1158.

decease of any one or more of them the said (*mortgagees*) during the continuance of the said sum of £ or any part thereof on the security hereby made the survivors or survivor of them or the executors or administrators of such survivor shall be entitled to and shall receive the whole of the principal sum of £ and the interest attending the same and all benefit and advantage of the said mortgage or security free from all claim and demand whatsoever on the part of the executors or administrators of the other or others of them so dying anything hereinbefore contained or any rule of equity to the contrary thereof in anywise notwithstanding *Provided always* and it is hereby lastly declared and agreed by and between the said parties to these presents and particularly the said (*mortgagee*) for himself his heirs executors and administrators doth hereby covenant and agree with the said (*mortgagor*) his executors administrators and assigns that if the said (*mortgagor*) his heirs executors administrators or assigns do and shall on the day of and the day of in every year so long as the said sum of £ or any part thereof shall remain due and owing upon the security of these presents or within days next after each of the said days respectively pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns interest for the said sum of £ or so much thereof as shall for the time being remain due and owing as aforesaid after the rate of £ for every £100 for a year then and in such case the said (*mortgagee*) his executors administrators or assigns shall and will accept and take interest for the said sum of £ after the rate of £ for every £100 for a year in lieu and full satisfaction of the interest which would otherwise be payable for the same under the covenant hereinbefore contained *Provided nevertheless* and it is hereby agreed and declared That if at any time or times while the said sum of £ or any part thereof shall remain due and owing upon the security of these presents the interest due in respect of the same or any part thereof shall be in arrear and unpaid for days next after any of the days on which such interest is hereinbefore made payable and the interest being so in arrear the said (*mortgagee*) his executors administrators or assigns shall nevertheless accept and take in respect of such arrears of interest any less sum than would be due after the rate of £ for every £100 for a year *And* if it shall happen that the interest for the said sum of £ or any part thereof shall at any subsequent time

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Agreement to
receive reduced
rate of interest
on punctual
payment.

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Proviso for
quiet enjoy-
ment until de-
fault in pay-
ment of the
sum advanced
by instalments.

or times be in arrear and unpaid for the space of days next after any day whereon a half-year's interest shall become due and payable thereon under the covenant hereinbefore contained then and in such case the said (*mortgagee*) his executors administrators or assigns shall not by reason of having accepted or taken at any previous time or times interest after the rate of £ for every £100 for a year for the said sum of £ or any part thereof be prevented or precluded from demanding recovering and receiving of and from the said (*mortgagor*) his heirs executors administrators or assigns interest for the said sum of £ or so much thereof as for the time being shall remain due and owing upon the security of these presents after the rate of £ for every £100 for a year for every such half year for which such last mentioned interest shall be so unpaid to the said (*mortgagee*) his executors administrators or assigns for the space of days next after the days whereon such half-year's interest shall from time to time become due and payable *Provided nevertheless* and it is hereby agreed and declared that if the said (*mortgagor*) his heirs executors administrators or assigns shall pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns on the day of in the year 186 the sum of £100 part of the said sum of £ together with interest after the rate of £ for every £100 for a year on the said sum of £ from the day of the date of these presents up to the said day of and the like sum of £100 further part of the said sum of £ or of such smaller sum part of the said sum of £ as shall for the time being remain unpaid together with interest after the rate aforesaid on so much of the said sum of £ as shall for the time being remain unpaid on the day of and the day of in every year during such time as the said sum of £ or any part thereof shall continue due on the security of these presents then and so long as the said (*mortgagor*) his heirs executors administrators or assigns shall duly make or cause to be made the half-yearly payments of principal and interest on the days herein appointed for the payment thereof and shall well and truly perform observe and fulfil all and every the covenants and agreements herein contained the said (*mortgagee*) his executors administrators or assigns shall not nor will call in or compel payment of the said sum of £ or such part thereof as shall be unpaid or use or take any ways means

or proceedings whatsoever for compelling payment thereof or of such part thereof as shall be unpaid or for obtaining the possession or the receipt of the annual income issues or profits of the said premises hereby made a security for the repayment of the said sum of £ and interest or any of them or any

part thereof or exercise the power of sale herein contained [And mortgagee covenants with mortgagor, ante, p. 1159] That

if the said (*mortgagor*) his heirs executors administrators or assigns shall pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns interest for the said sum of £ after the rate of £ for every £100 for a year by equal half-yearly payments on the day of and the day of or within

days next after each of the said days respectively in every year until the day of in the year 186 then

and in such case the said (*mortgagee*) his executors administrators or assigns shall not nor will before the day of in the year 186 call in or compel payment of the

said sum of £ or any part thereof or use or take any ways means or proceedings whatsoever for compelling payment thereof or of any part thereof or for obtaining the possession or the receipt of the annual income issues or profits of the said premises hereby made a security for the payment of the said sum of £ and interest or any of them or any part thereof

or exercise the power of sale herein contained *Provided always* and it is hereby agreed and declared that if at any time or times whilst the said sum of £ or any part thereof shall remain due and owing upon the security of these presents the interest due in respect of the same or any part thereof shall be in arrear and unpaid for days next after any of the days

on which such interest is hereinbefore made payable and the same interest being so in arrear the said (*mortgagee*) his executors administrators or assigns shall nevertheless neglect or forbear to call in or compel payment of the said sum of £

or so much thereof as shall be then due or shall accept the interest which shall be so in arrear or any part thereof and if it shall happen that the interest due in respect of the same sum of £ or any part thereof shall at any subsequent time or

times be in arrear and unpaid for days next after any of the days on which such interest is hereinbefore made payable then and in such case the said (*mortgagee*) his executors administrators or assigns shall not by such neglect or forbearance or

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Covenant not
to call in the
mortgage debt.

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Covenant not
to pay off the
mortgage debt.

by such acceptance of interest as aforesaid be precluded or prevented from calling in or compelling payment of the said sum of £ or so much thereof as shall be unpaid and the interest thereof at any time before the day of in the year 186 or from using or taking before that day such ways means or proceedings as shall appear advisable for compelling payment of the said sum of £ or such part thereof as shall be unpaid or for obtaining the possession or the receipt of the annual income issues or profits of the said premises hereby made a security for the payment of the said sum of £ and interest or any of them or any part thereof or from exercising the power of sale herein contained [*And mortgagor covenants with mortgagee, ante, p. 1159*] *That* the said (*mortgagor*) his heirs executors administrators or assigns shall not nor will pay or cause to be paid to the said (*mortgagee*) his executors administrators or assigns the said sum of £ hereby secured or any part thereof before the day of in the year 186 or before that day redeem or by any means whatsoever endeavour to redeem the said hereditaments and premises hereby conveyed unless the said (*mortgagee*) his executors administrators or assigns shall previously call in the said sum of £ or demand or agree to accept payment thereof by some writing under the hand or hands of the said (*mortgagee*) his executors administrators or assigns or proceed at law or in equity to recover possession or foreclose the equity of redemption of the said hereditaments and premises or any part thereof but that the said sum of £ or so much thereof as shall not be called in or accepted by the said (*mortgagee*) his executors administrators or assigns as aforesaid shall in the meantime and until the said day of in the year 186 remain and be charged upon and secured by and out of the said hereditaments and premises hereby conveyed [*Mortgagor covenants with mortgagee, ante, p. 1159*] *That* the said (*mortgagor*) his heirs executors administrators or assigns shall and will from time to time and at all times while any principal money or interest shall remain due on the security of these presents keep all and singular the messuages and buildings hereby conveyed well and sufficiently insured against loss or damage by fire in the name or names of the said (*mortgagee*) his executors administrators or assigns in the sum of £ at the least in the Insurance Office or in some other reputable Insurance Office in London or Westminster and shall and will deposit

Covenant to
insure against
fire.

and leave the policy or policies of assurance to be effected for such purpose at the office of and shall and will from time to time duly and punctually pay the annual and other premium or premiums or sum or sums of money which shall be necessary for keeping the said premises insured to such amount as aforesaid and shall and will make such payments at least days before the last day on which the same respectively must be made in order to keep the said premises so insured and shall and will forthwith deliver the receipt for every such payment or cause the same to be delivered to the said (*mortgagee*) his executors administrators or assigns and that it shall be lawful for the said (*mortgagee*) his executors administrators or assigns in case the said (*mortgagor*) his heirs executors administrators or assigns shall refuse or neglect to make such payments as aforesaid or any of them at any time or times to advance or pay such annual premium or premiums or sum or sums as shall be necessary for the purpose of keeping the same premises so insured to such amount as aforesaid or in case such insurance as aforesaid shall not be effected or shall at any time become void or not continue on foot for effecting or renewing and keeping up the insurance of the same premises to such amount as aforesaid And that the said (*mortgagor*) his executors or administrators shall and will from time to time on demand pay to the said (*mortgagee*) his executors administrators or assigns all such sum or sums of money as the said (*mortgagee*) his executors administrators or assigns shall lay out or expend for such purposes as last aforesaid not exceeding in the whole the sum of £ with interest for the same after the rate of £ for every £100 for a year from the time or respective times of the same sum or sums having been advanced or paid and that in the meantime and until such sum or sums of money shall be so repaid with such interest as aforesaid all and singular the hereditaments and premises hereby conveyed shall stand and be charged with such sum or sums of money and such interest thereon as aforesaid and shall not be redeemed or redeemable until full payment shall have been made as well of such sum or sums of money and interest as of the said sum of £ and the interest thereon And it is hereby further agreed and declared that all and singular the monies (if any) which shall become payable under or by virtue of the insurances aforesaid or any of them shall at the option of the said (*mortgagee*) his executors administrators or assigns be applied either

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Covenant to
keep the pre-
mises in repair.

in or towards satisfaction of the principal monies and interest which shall for the time being be due and owing upon the security of these presents or in rebuilding repairing or reinstating the buildings or premises in respect of the damage or destruction whereof the same monies shall be payable [*And mortgageor covenants with mortgagee, ante, p. 1159*] That the said (*mortgagor*) his heirs executors administrators or assigns shall and will from time to time and at all times while any principal money or interest shall remain due and owing upon the security of these presents keep all and singular the messuages buildings and premises hereby conveyed in perfect repair and if the said (*mortgagor*) his heirs executors administrators or assigns at any time or times during such period as last aforesaid for days after a request in writing by the said (*mortgagee*) his executors administrators or assigns requiring the said (*mortgagor*) his heirs executors administrators or assigns to repair the said premises or any part thereof to be specified in such request is given to him or them or left at his or their usual place of abode shall neglect or refuse to repair the same then and so often as the same shall occur it shall be lawful for the said (*mortgagee*) his executors administrators or assigns to repair the same premises or cause and procure the same to be repaired And [*mortgagor will repay the sums so expended with interest which shall be charged upon the premises, see ante, p. 1165*] And for the better securing the payment of the interest of the said principal sum of £ the said (*mortgagor*) doth grant unto the said (*mortgagee*) his executors administrators or assigns (subject nevertheless and without prejudice to the right of foreclosure and ejectment and to the several other rights and remedies to which the said (*mortgagee*) his heirs executors administrators or assigns is or are or may be entitled either at law or in equity for recovering and compelling payment of the said sum of £ and interest) that as often as it shall happen that the interest of the said principal sum of £ shall be in arrear in the whole or in part for the space of days after any of the days hereinbefore appointed for payment of the same it shall be lawful for the said (*mortgagee*) his executors administrators or assigns into and upon the messuages hereditaments and premises hereby

Power of dis-
tress to secure
the payment of
interest (*a*).

(*a*) See cases on this subject, *ante*, p. 431, sect. 1, and 1 Smith's L. C. 447—450, 4th ed.; 5 Jarm. Conv. by Sweet, pp. 514, 515.

granted or intended so to be and hereinbefore covenanted to be surrendered respectively or into and upon any part of the same in the name of the whole to enter and distrain for the same interest and the arrears thereof and the distress and distresses then and there found to impound and in pound to detain and in due time to appraise and dispose of according to the due course of law in the same manner in all respects as landlords are by act of parliament or otherwise authorized to do in respect of distresses for arrears of rent reserved upon leases for years to the intent that the said (*mortgagee*) his executors administrators or assigns shall by the same distress or distresses be paid and satisfied all arrears of the said interest and all costs occasioned by the nonpayment thereof *Provided always* and it is hereby expressly declared and agreed by and between the said parties hereto that so long as the said messuages lands tenements and hereditaments or any part thereof shall remain redeemable according to the rules and practice of courts of equity it shall and may be lawful for the said (*mortgagor*) his heirs or assigns to redeem the messuage or farm house land and hereditaments in D. hereinbefore described on payment by the said (*mortgagor*) his heirs executors administrators or assigns unto the said (*mortgagees*) or the survivor of them or the executors administrators or assigns of such survivor of the sum of £ part of the said sum of £ together with all interest which at the time of such redemption shall be due for or in respect of the said sum of £ and upon such payment being made as aforesaid the said (*mortgagees*) or the survivor of them or the heirs or assigns of such survivor shall and will at the request costs and charges of the said (*mortgagor*) his heirs executors administrators or assigns grant and reconvey the said messuage or farm house land and hereditaments in D. aforesaid unto the said (*mortgagor*) his heirs and assigns or as he or they shall direct or appoint.

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Power to redeem one of two estates on payment of part of mortgage money (*a*).

(*a*) Where two estates are mortgaged, the Court of Chancery will not interpose in favour of the redemption of one without the redemption of both, Coote on Mortg. 400.

MORTGAGE OF COPYHOLDS.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <i>How effected.</i> 2. <i>Admittance.</i> 3. <i>As to framing conditional surrender to avoid double Admittance on Sale.</i> | <ol style="list-style-type: none"> 4. <i>Presentment.</i> 5. <i>Proviso for Redemption.</i> 6. <i>Stamp.</i> |
|---|---|



How effected.

SECT. 1. In mortgaging copyholds, it is usual for the mortgagor, either to enter into a covenant to surrender, and afterwards to make an actual surrender on condition, or to make the surrender first, and at the same time to enter into a deed of covenants for payment of the money, for title, and for further assurance, or a bond with a condition for securing the same objects. The surrender ought to be presented and entered on the rolls, 1 Watk. Cop. 146. If the copyholder is a tenant in tail, see *DISENTAILING DEEDS*, ante, pp. 911—914.

Admittance.

2. Although until a mortgagee is admitted the legal estate remains in the mortgagor, Co. Cop. s. 39; *Shewen v. Wroot*, 5 East, 132; *S. C.* 1 Smith, 263; yet as the mortgagor is precluded by the surrender from charging the land with any further incumbrance, and the mortgagee would on admittance be liable to the customary services, and also to the stamp duty and fees of admittance, he is seldom admitted. The mortgagor until the admittance of the mortgagee may make a second surrender, which will be valid if the first surrender is not perfected by admittance. But although the first surrender is not inrolled, the second mortgagee, though without notice of the former, does not by the inrolment of his surrender acquire priority, where, by the custom of the manor, no time is limited for the presentment of the surrender, *Horlock v. Priestley*, 2 Sim. 75; *Coote on Mortg.* 115, 3rd ed.

As to framing conditional surrender to avoid double admittance on sale.

3. With a view of saving the expense of a double admittance in case of the exercise by the mortgagee of his power of sale, a practice was originated of framing conditional surrenders of copyholds, to such uses as the mortgagee should appoint, and in default of appointment to the use of him and his heirs, so that when he sold, the purchaser as his appointee might become entitled to admittance upon the conditional surrender. The question, however, was raised, whether, in the absence of a special custom, the lord of the manor is bound to receive and inroll a surrender of this description (the tendency of which to deprive the lord of his right to a fine is obvious), and it was decided in the negative. This form of surrender cannot, therefore, be effectually resorted to, *Flach v. Downing College*, 13 C. B. 945. If the lord accept such a surrender he cannot afterwards refuse to act upon it, *Eddleston v. Collins*, 3 De G., M. & G. 1; *Glass v. Richard-*

son, 9 Hare, 698; 2 De G., M. & G. 658. See 2 Davidson's Conv. 586, 2nd ed.; 5 Jarm. Conv. by Sweet, 510; *post*, p. 1173 and n. Where the mortgagee has been admitted on discharging the debt, there must be a surrender to and admission of the mortgagor at the expense of the latter. When the mortgagee has not been admitted, it is sufficient to enter an acknowledgment of satisfaction in the court rolls. See Coote on Mortg. 113, 3rd ed.

Mortgage of Copyholds.

4. Where a surrender is made out of court, presentment is necessary to give it validity, see Scriv. on Copyholds, pp. 222 *et seq.*; but equity will relieve as well where there is a want of such presentment as where it is defective, *Taylor v. Wheeler*, 2 Vern. 564; *S. C.* 2 Salk. 449; Coote on Mortg. 185, 3rd ed.

Presentment.

5. A clause is frequently inserted in the proviso for redemption, making the payment of the rents and fines a part of the condition; see a covenant for this purpose, *ante*, p. 1143; but without such a clause as this, a court of equity would not permit a mortgagor to redeem without reimbursing the mortgagee all such payments, but it would limit the rate of interest to 4 per cent. See *Hodgson v. Hodgson*, 2 Keen, 704; *Phene v. Gillan*, 5 Hare, 1; *Wroughton v. Turtle*, 11 M. & W. 561; *Lanrance v. Boston*, 7 Exch. 28.

Proviso for redemption.

6. As to the stamp on mortgage of copyholds, see *ante*, pp. 1126 Stamp.—1130.

No. CCCCLXIV.

Conditional Surrender out of Court of Copyhold Lands of Inheritance into the hands of a Deputy Steward.

No.
CCCCCLXIV.
Surrender of Copyholds.

The manor of } *Be it remembered* That on the
in the county of } day of &c. E. F. of &c. one of the
customary or copyhold tenants of the said manor came before
C. D. gentleman deputy steward of J. S. esquire chief steward
of the said manor and in consideration of the sum of £ of
lawful money &c. to the said E. F. in hand well and truly paid
by G. H. of &c. did out of court surrender into the hands of the
lord of the said manor by the hands and acceptance of the said
deputy steward by the rod according to the custom of the said
manor *All* &c. with the appurtenances (and to which same
premises the said E. F. was admitted at a general court held for
the aforesaid manor on the day of) and the re-
version and reversions remainder and remainders rents issues
and profits thereof and all the estate right title interest benefit
property power claim and demand whatsoever of the said E. F.

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CCCCCLXIV.
*Surrender of
Copyholds.*

in to or out of the same premises and every part thereof *To the use* of the said G. H. his heirs and assigns for ever according to the custom of the said manor *Subject* nevertheless to and upon this express condition that if the said E. F. his heirs executors or administrators do and shall well and truly pay or cause to be paid unto the said G. H. his executors administrators or assigns the sum of £ of lawful money aforesaid on the day of next together with interest for the same after the rate of 5*l.* per cent. per annum computed from the date of this surrender clear of all taxes and deductions whatsoever (and being the same principal and interest monies as are mentioned to be secured to the said G. H. by the covenant (*a*) of the said E. F. contained in a certain indenture bearing even date herewith) and made between &c. (*parties*) then this surrender is to be void and of no effect otherwise it is to remain in full force and virtue.

E. F.

Taken &c. by me
C. D. deputy steward.



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*Deed of
Covenants as to
Copyholds.*

No. CCCCCXV.

*Deed of Covenants to accompany a Conditional Surrender
of Copyholds.*

Recitals.

Application
for loan.

Of conditional
surrender to
mortgagee.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* the said A. B. having occasion for the loan of the sum of £ did lately apply to the said C. D. to lend and advance him the same which he accordingly consented and agreed to do on having the repayment thereof with lawful interest for the same secured to him the said C. D. by a mortgage of the copyhold hereditaments hereinafter described and also collaterally secured by the covenant of the said A. B. hereinafter contained *And whereas* the said A. B. in consideration of the sum of £ of lawful money of Great Britain advanced and lent to him by the said C. D. hath at a court holden for the manor of in the county of on the day of the date of these presents duly surrendered (*b*) into the hands of the lord of the said manor of according to the custom of the same manor *All &c.*

(*a*) A bond has been disused since the Act of 1 Will. 4, c. 47, which placed a covenant on the same footing as regards devisees of land, see *Scriv. on Copyholds*, p. 839, 4th ed., *ante*, p. 1123.

(*b*) See a covenant to surrender copyholds, *ante*, p. 1142.

together with the appurtenances to the said hereditaments and premises belonging or appertaining to the use of the said C. D. his heirs and assigns for ever *Subject* nevertheless to a proviso or condition contained in the said surrender for making the same void on payment by the said A. B. his heirs executors administrators or assigns unto the said C. D. his executors administrators or assigns of the sum of £ of lawful money aforesaid with interest for the same after the rate of 5*l.* per cent. per annum on the day of next ensuing clear of all taxes and deductions whatsoever *Now this Indenture witnesseth* That in consideration of the said sum of £ so lent and advanced to the said A. B. by the said C. D. as aforesaid the receipt of which same sum the said A. B. doth hereby acknowledge and from the same sum and every part thereof doth acquit release and discharge the said C. D. his heirs executors administrators and assigns and every of them for ever by these presents he the said A. B. for himself his heirs executors and administrators doth covenant with the said C. D. his heirs executors administrators and assigns by these presents in manner following (that is to say) That he the said A. B. his executors or administrators shall and will well and truly pay or cause to be paid unto the said C. D. his executors administrators or assigns the said sum of £ with interest for the same after the rate on the day and in manner mentioned and appointed in that behalf in the condition of the said recited surrender without any deduction or abatement whatsoever and according to the purport true intent and meaning of the same condition and of the parties hereto *And* the said (*mortgagor*) doth &c. covenant with the said (*mortgagee*) his heirs and assigns that he the said A. B. at the time of making the said recited surrender was lawfully and rightfully seised of or well entitled to the said and hereditaments hereinbefore described with their appurtenances for a good sure perfect lawful absolute and indefeasible estate of inheritance in fee simple in possession according to the custom of the manor of aforesaid without any manner of condition trust or other restraint cause matter or thing whatsoever to alter change defeat revoke impeach make void lessen or determine the same *And* that he the said A. B. at the time of making the hereinbefore recited surrender had in himself good right full power and lawful and absolute authority to surrender and assure all and singular the same customary or copyhold hereditaments and premises with their appurtenances to the use of the said C. D. his heirs

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*Deed of
Covenants as to
Copyholds.*

Covenants by
mortgagor.

To pay the
mortgage
money.

For title.

No.
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*Deed of
Covenants as to
Copyholds.*

Quiet enjoy-
ment.

Free from in-
cumbrances.

For further
assurance.

and assigns for ever in manner aforesaid and according to the true intent and meaning of the same surrender and of the parties hereto *And moreover* that it shall and may be lawful for the said C. D. his heirs and assigns from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £ or any part thereof or the interest thereof or any part thereof contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender peaceably and quietly to enter into and upon have hold occupy possess and enjoy all and singular the said customary or copyhold hereditaments and premises with their appurtenances and to receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any lawful let suit trouble eviction ejection interruption or disturbance of from or by the said A. B. or his heirs or of from or by any other person or persons whomsoever and that free and clear and freely and clearly and absolutely acquitted exonerated and discharged or otherwise by the said A. B. his heirs executors and administrators well and effectually saved defended kept harmless and indemnified of from and against all and all manner of former and other gifts grants bargains sales leases mortgages dower or freebench and all and singular other estates titles troubles charges and incumbrances whatsoever (except only the customary fines rents suits and services thenceforth payable and to be performed in respect of the aforesaid copyhold hereditaments and premises to the lord or lady lords or ladies of the said manor of for the time being) *And further* that he the said A. B. and his heirs and all and every other persons and person having or lawfully or equitably and rightfully claiming or to claim any estate right title trust or interest in to or out of the said hereditaments and premises so surrendered as aforesaid with their appurtenances shall and will from time to time and at all times from and after default shall happen to be made in payment of the said principal sum of £ or any part thereof or the interest thereof or any part thereof contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender and of the parties hereto upon the request of the said C. D. his heirs executors administrators or assigns but at the proper costs and charges in the law of the said A. B. his heirs executors or administrators (*a*) make do and execute or

(*a*) If a power of sale is added, see covenant for further assurance, *ante*, pp. 1144, 1152.

cause and procure to be made done and executed all and every such further and other acts deeds surrenders and assurances in the law whatsoever for the further better more perfectly and absolutely surrendering assuring and confirming all and singular the said customary or copyhold hereditaments and premises hereinbefore described with their appurtenances to the use of the said C. D. his heirs and assigns for ever according to the custom of the manor of aforesaid freed and absolutely discharged from the proviso or condition for redemption contained in the said recited surrender and of and from all right and equity of redemption whatsoever as by the said C. D. his heirs or assigns or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required [A Power of Sale may be inserted in a Deed of this kind] And this Indenture further witnesseth (a) That for effectuating the power of sale hereinbefore contained of and concerning the said copyhold hereditaments the said (*mortgagor*) doth hereby nominate constitute and appoint the said (*mortgagee*) his true and lawful attorney for him and in his name place and stead to appear at any court or courts to be holden for the said manor or out of court according to the custom thereof and to surrender out of the hands of him the said (*mortgagor*) into the hands of the lord or lady of the said manor All such part or parts of the said copyhold messuages tenements and hereditaments of him the said (*mortgagor*) holden of the said manor as shall be sold under or by virtue of the power of sale hereinbefore contained And the reversion &c. And all the estate &c. to the use of the purchaser or purchasers thereof his her or their heirs or assigns absolutely to the intent that he or they may be admitted tenant or tenants thereof accordingly he the said (*mortgagor*) hereby for himself and his heirs ratifying confirming and allowing and agreeing to ratify confirm and allow all and whatsoever shall be lawfully done therein by virtue hereof *In witness &c.*

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*Deed of
Covenants as to
Copyholds.*

Appointment
of attorney to
surrender to
purchaser
under power of
sale.

(a) In order to supersede the necessity of admitting the mortgagee with a power of sale, and to enable him to surrender to a purchaser and so avoid the payment of a fine, the following form has in some cases been inserted in mortgages of copyholds with a power of sale, *ante*, p. 1168, pl. 3. It is to be observed, however, that the power of attorney will remain in force only during the life of the mortgagor. See *ante*, p. 845, pl. 19, as to the execution of deeds by attorney. A letter of attorney which is part of a security for money is not revocable, *Walsh v. Whitcomb*, 2 Esp. 565; *Gaussen v. Morton*, 10 B. & C. 731; *Abbott v. Stratten*, 3 Jones & L. 613; *Smart v. Sanders*, 5 C. B. 916; *Bromley v. Holland*, 7 Ves. 3, 28.

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No. CCCCLXVI.

Copyholds
(Bond).

Bond to accompany the Surrender.

Obs. A bond of this kind may be taken instead of a deed of covenant.

Obligation.

Know all Men &c. (see *ante*, BONDS, No. CCXXX., p. 497) *Whereas* the above bounden (*obligor*) being a copyhold tenant of the manor of N. in the county of S. has this day in consideration of the sum of £ by the said (*obligee*) to the said (*obligor*) well and truly paid and surrendered into the hands of the lord [*or "lady" as the case may be*] of the said manor [*or "by the acceptance of (steward) of &c. the steward of the said manor" or "by the acceptance of A. B. and C. D. two customary tenants of the said manor"*] *All* &c. to the use of the said (*obligee*) his heirs and assigns for ever at the will of the lord according to the custom of the said manor at or under the rents fines and services therefore due and of right accustomed subject nevertheless to a proviso or condition contained in the said surrender &c. (see *ante*, p. 1169).

Condition.

Now the Condition of the above written bond or obligation is such That if the said (*obligor*) his heirs executors or administrators do and shall well and truly pay or cause to be paid unto the said (*obligee*) his executors administrators and assigns the said principal sum of £ and interest and all heriots fines fees for admittances and customary dues and payments whatsoever (not exceeding the sum of £) which he the said (*obligee*) his executors administrators or assigns shall pay or become liable to pay in respect of the said copyhold premises at the time of his admission thereto with interest for the same after the rate aforesaid according to the true intent and meaning of the said surrender and the proviso or agreement for redemption therein contained *And also* if he the said (*obligor*) was at the time of making the said surrender lawfully and rightfully seised to him and his heirs of the said copyhold hereditaments to his and their own use for an estate of inheritance therein according to the custom of the said manor *And also* if he then had good right full power and lawful and absolute authority to surrender the same to the use of the said (*obligee*) his heirs and assigns *And* that free and clear from all estates liens charges and incumbrances whatsoever (save and except the rents duties and services for the said copyhold premises due and of right accus-

tomed to be paid and performed according to the custom of the said manor) *And moreover* if he the said (*obligor*) and his heirs and all persons lawfully claiming or to claim any estate right or interest in or to or out of the said copyhold premises do and shall at the request of the said (*obligee*) his executors administrators and assigns but at the costs and charges of the said (*obligor*) his executors administrators and assigns make execute and perfect or cause to be made executed and perfected all such further and other surrenders and assurances for the more effectually conveying and assuring the said copyhold premises with the appurtenances to the use of the said (*obligee*) his heirs executors administrators or assigns or as his or their counsel in the law shall reasonably advise and require Then the above written bond or obligation shall be void otherwise the same shall remain in full force and virtue.

No.
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Copyholds
(*Bond*).

No. CCCCLXVII.

Mortgage of a Leasehold for a Term of Years by Assignment.
(*Variations where it is by Underlease,* also where there is a Power of Sale.*)

No.
CCCCCLXVII.
Leaseholds for
Years.

Obs. 1. It is now settled that where a party takes an assignment of a lease by way of mortgage, the whole interest passes to him, and he becomes liable to the rent and covenants, *Williams v. Bosanquet*, 1 Brod. & B. 238. To prevent this liability, where a lease is clogged with onerous stipulations, an underlease is recommended; but as there is no privity, either of estate or contract between the original lessor and an underlessee (see *ante*, LEASES, Pref. sects. 46—49), a mortgagee loses, by an underlease, the benefit of the covenants in the lease. An equitable mortgagee, by deposit of a lease, is not compellable in equity to take a legal assignment of the lease, although he may have entered into the possession of the premises, and paid rent. And it seems that he is not liable to the lessor upon the covenants, there being no privity between him and the lessor until he has made himself legal assignee, *Moore v. Gregg*, 2 Phill. C. C. 717; *Moore v. Choat*, 8 Sim. 508; *Cox v. Bishop*, 3 Jur., N. S. 499; 26 L. J., Ch. 389. See Coote on Mortg. Bk. II. Ch. IV.; 2 Davidson's Conv. pp. 588—591, 2nd ed. As to renewable leaseholds, see *next Precedent*.

2. As to the stamp, see *ante*, pp. 1126—1128.

3. For variations, where there is a policy of insurance to be assigned, see *ante*, ASSIGNMENTS OF LEASE, p. 392, n.

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*Leaseholds for
Years.*

This Indenture made &c. Between (mortgagor) of &c. of the one part and (mortgagee) of &c. of the other part Whereas [recite original lease, and also mesne assignments if any there be, see ASSIGNMENTS, ante, p. 389] And whereas [recite contract for loan, see MORTGAGES, ante, pp. 1131, 1140] Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the sum of £ of lawful &c. to the said (mortgagor) in &c. paid by the said (mortgagee) at &c. the receipt whereof &c. [Covenant for payment of principal money with interest thereon, see ante, p. 1132] And this Indenture also witnesseth That in further pursuance of the said agreement and for the considerations aforesaid He the said (mortgagor) Doth by these presents assign transfer (a) and set over unto the said (mortgagee) his executors administrators and assigns All that the said piece and parcel of land messuage or tenement and premises comprised in the said in part recited indenture of lease and every part and parcel of the same with their and every of their rights members and appurtenances together with the same indenture of lease and all benefit and advantage thereof and all other deeds evidences and writings relating to the said premises now in the custody possession or power of the said (mortgagor) To have and to hold the said piece and parcel of land messuage or tenement and all and singular other the premises hereby assigned [or demised] or intended so to be and every part and parcel of the same with the appurtenances unto the said (mortgagee) his executors administrators and assigns for and during the rest residue and remainder of the said term of years therein now to come and unexpired (b) Subject nevertheless to the proviso or condition for redemption hereinafter contained (that is to say) Provided always and it is hereby agreed and declared that if the said (mortgagor) his executors administrators or assigns do and shall pay or cause to be paid unto the said (mortgagee) his executors administrators or assigns the sum of £ together with interest for the same in the meantime after the rate of £ for every £100 by the year on the day of next without any deduction or abatement whatever (except income tax) And if the said (mortgagor) his executors

Proviso for redemption.

(a) If it be an underlease instead of an assignment, say, "Doth demise lease and to farm let."

(b) If it be an underlease, say, "Save and except the last day [or 'the last six days' as the case may be] of the said term."

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*Leaseholds for
Years.*

administrators or assigns shall until full payment of the said principal and interest monies pay the rent and otherwise perform the covenants and conditions contained in the said recited indenture of lease then and in such case and at any time thereafter the said (*mortgagee*) his executors administrators or assigns shall and will at the request and at the expense of the said (*mortgagor*) re-assign (*a*) the said hereditaments and premises hereby assigned or intended so to be unto the said (*mortgagor*) his executors administrators and assigns or as he or they shall direct for the residue then to come of the said term of years free from all incumbrances in the meantime to be made done or committed by the said (*mortgagee*) his executors administrators or assigns or any other person or persons whomsoever claiming or to claim by from or under him or them or any of them And the said (*mortgagor*) for himself his heirs executors administrators and assigns doth hereby covenant with the said (*mortgagee*) his executors administrators and assigns in manner following (that is to say) *That* the hereinbefore recited indenture of lease is a good valid and subsisting lease in the law for the premises thereby demised and is still in full force for all the residue now unexpired of the said term of years thereby granted and that the said (*mortgagor*) now has in himself good right and absolute authority by these presents to assign (*b*) or otherwise assure the said and premises hereby assigned [*or hereby granted and demised*] or intended so to be and every part of the same with the appurtenances unto the said (*mortgagee*) his executors administrators and assigns for all the residue which is now unexpired of the said term of years in manner aforesaid according to the true intent and meaning of these presents *And further* that if default shall be made in payment of the said sum of £ or any interest for the same or any part thereof respectively contrary to the covenant for payment hereinbefore contained it shall be lawful for the said (*mortgagee*) his executors administrators and assigns [subject to the payment of the rent and the observance and performance of the covenants conditions and agreements reserved and contained in the said indenture of lease] and on the part of the lessee therein named to be paid observed and performed (*c*) thenceforth and

Lease valid.

For quiet enjoyment.

(*a*) If by underlease, say, "assign the said premises hereby demised &c."

(*b*) If underlease, "to grant and demise."

(*c*) In an underlease the words within brackets to be omitted.

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Free from in-
cumbrances.

That rent and
covenants have
been paid and
performed.

To pay rent
and observe
covenants.

For further
assurance.

at all times thereafter during the continuance of the said term of years peaceably and quietly to enter into and upon hold and enjoy the said premises and every part of the same with the appurtenances and to receive and take the rents and profits thereof to and for his and their own use without any lawful eviction interruption or denial whatsoever from or by the said (*mortgagor*) or any other person or persons whomsoever having or rightfully claiming or to claim any estate right title or interest at law or in equity in to or out of the same premises or any part thereof *And* that free and discharged or otherwise by the said (*mortgagor*) his heirs executors or administrators well and effectually indemnified from and against all former estates rights titles charges and incumbrances whatsoever (except (*a*) the rent covenants conditions and agreements respectively reserved and contained by and in the hereinbefore recited indenture of lease and henceforth on the part of the lessee therein named his executors administrators or assigns to be respectively paid observed and performed) *And further* that the rent covenants conditions and agreements respectively reserved and contained as aforesaid have been duly paid observed and performed by the said (*mortgagor*) up to the day of the date of these presents *And* that he the said (*mortgagor*) his executors or administrators shall and will so long as any principal or interest monies shall remain due or owing upon the security of these presents [and so long as he or they shall be in the possession or receipt of the rents and profits of the said premises (*b*)] pay the rent and duly observe and perform the covenants conditions and agreements respectively reserved and contained by and in the hereinbefore recited indenture of lease and by and on the part of the lessee therein named to be paid observed and performed *And further* that the said (*mortgagor*) his executors or administrators and every person whosever having or lawfully claiming or to claim any estate right title or interest at law or in equity in to or out of the said premises or any part thereof (except the person or persons whose estate or interest or respective estates or interests is or are hereinbefore excepted (*c*)) will from time to time and at all times hereafter upon every reasonable request of the said (*mortgagee*) his executors administrators or assigns and at the costs and charges of the said (*mortgagor*) his executors administrators

(*a*) In an underlease this exception to be omitted.

(*b*) In an underlease the words within brackets to be omitted.

(*c*) If an underlease this exception to be omitted.

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or assigns [until the said premises shall have been sold and assigned under the power in that behalf herein contained or until the equity of redemption under or by virtue of these presents shall have been barred or extinguished and afterwards at the costs and charges of the person or persons requiring the same (a)] make do or execute and perfect every such lawful deed assignment or assurance in the law whatsoever for more effectually or satisfactorily assigning or otherwise assuring the premises hereby assigned [*or demised*] or intended so to be and every part of the same with the appurtenances unto the said (*mortgagee*) his executors administrators or assigns thenceforth for all the residue or remainder which shall be then unexpired of the said term of years in manner aforesaid according to the true intent and meaning of these presents as by the said (*mortgagee*) his executors administrators or assigns or his or their counsel in the law shall be reasonably advised and required [*If a power of sale is added, see ante, pp. 1145—1148*] *In witness &c.*

—◆—

No. CCCCLXVIII.

No.
CCCCLXVIII
*Renewable
Leaseholds.*

Mortgage of a Renewable Leasehold for Years. (Variations where it is a Leasehold for Life or Lives, or for Years determinable on a Life or Lives; also, where it is not renewable, and where there is a Life Insurance.)

Obs. 1. When a renewable lease is the subject of a mortgage, a covenant should be introduced on the part of the mortgagor, that he will procure the renewal of the lease, or the lives to be filled up at his own expense, otherwise the mortgagee cannot compel him to do it; but he must pay the expense of renewal, and reimburse himself, by adding it to the principal, *Lacon v. Mertins*, 3 Atk. 4. But the mortgagee without any agreement may renew the lease himself, and hold it as a security for the monies expended in obtaining the renewal; and the rate of interest on the sum expended will be regulated by the rate of interest on the original loan, see 2 Davidson's Conv. 549, 2nd ed. A mortgagee holds a lease renewed by him as a mortgagee, and not as absolute owner; and where a mortgagor renews it, the mortgagee will be entitled to the benefit of it as a security.

2. When a mortgage is effected upon a lease for life or lives, which

(a) The words in brackets to be omitted where no power of sale.

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*Renewable
Leaseholds.*

is not renewable, it is usual to have the single life, or the life of the survivor of several, insured. This may be done by the mortgagor, previous to the execution of the mortgage deed, and the policy of insurance assigned at the same time; or by the mortgagor entering into a covenant to insure and assign the policy of insurance; or there may be a covenant introduced enabling the mortgagee to insure.

Recital of original lease.

This Indenture made &c. Between (*mortgagor*) of &c. of the one part and (*mortgagee*) of &c. of the other part *Whereas* (a) by indenture of lease bearing date &c. and made between &c. of the one part and the said (*mortgagor*) of the other part for the considerations therein mentioned the said (*lessors*) Did grant demise and to farm let unto the said (*lessee*) *All that* messuage &c. situate &c. with the appurtenances *To hold* the same with the appurtenances unto the said (*mortgagor*) his executors administrators and assigns for the term of years subject to certain covenants and conditions therein contained *And* in the now reciting indenture is contained a covenant on the part of the said (*lessors*) that they the said (*lessors*) or their successors should and would at the request costs and charges of the said (*mortgagor*) his executors or administrators at the end of years execute a new lease of the said thereby demised premises at and under the same rent and with the like proviso to commence at the expiration of the said term of years and so from time to time for ever at the end of every years he or they paying for such renewal unto the said (*L.*) the sum of £

(a) If it be a lease for lives, say, "*Whereas* by an indenture bearing date &c. and made between (*lessor*) prebendary of of the one part and (*mortgagor*) of &c. of the other part the said (*lessor*) for the considerations therein mentioned Did grant and demise unto the said (*M.*) *All* &c. *To hold* the same with the appurtenances unto the said (*M.*) his heirs and assigns from the making thereof for and during the natural lives of (*nominees*) and the natural life of the longest liver of them under and subject to the yearly rent and the several covenants and agreements therein contained on the part of the said (*M.*) his heirs and assigns to be respectively paid observed and performed."

If it be a lease for years, determinable on lives, say, "*Whereas* by indenture bearing date &c. and made between &c. the said (*lessor*) for the considerations &c. Did grant &c. unto the said (*mortgagor*) his &c. *All that* capital messuage &c. *To hold* the same &c. unto the said (*M*) for and during the term of years if A. B. of &c. aged C. D. of &c. aged and E. F. of &c. aged should so long live at or under the yearly rent &c. and subject to the covenants &c."

If it be a lease for lives, say, "*Doth* grant alien and confirm unto the said (*mortgagee*) his heirs and assigns." As a life estate is a freehold, it must be conveyed either by grant, or by feoffment with livery of seisin.

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*Renewable
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by way of fine and executing a counterpart of every such lease
And whereas [recite contract for loan, see ante, pp. 1131, 1140]

Now this Indenture witnesseth That in consideration of the sum
of £ by the said (*mortgagee*) in &c. to the said (*mort-*

gagor) at &c. paid the receipt whereof the said (*mortgagor*)
doth hereby acknowledge and of and from the same doth
acquit &c. the said (*mortgagee*) his heirs executors adminis-
trators and assigns He the said (*mortgagor*) *Doth* hereby for
himself his heirs &c. [see *covenant for payment of mortgage*
money, ante, p. 1132] *And this Indenture also witnesseth* That
in further pursuance of the said agreement and for the con-
siderations aforesaid He the said (*mortgagor*) *Doth* hereby
assign transfer and set over unto the said (*mortgagee*) his ex-
ecutors administrators and assigns *All* that &c. And all the
estate &c. *To have and to hold* the said piece and parcel of land
and all and singular other the premises hereby assigned (*a*) or
intended so to be and every part and parcel thereof with the
appurtenances unto the said (*mortgagee*) his executors adminis-
trators and assigns from henceforth for and during the residue
of the said term of years *Subject* nevertheless to the pro-

Proviso for re-
demption.

viso or agreement for redemption hereinafter contained (that is
to say) *Provided always* (see *ante, p. 1176*) And the said
(*mortgagor*) for himself &c. doth hereby covenant with the said
(*mortgagee*) his executors administrators and assigns that if the
said sum of £ or any part thereof shall remain unpaid

Covenant to
pay interest.

after the said day of next he the said (*mortgagor*) his
heirs executors or administrators will pay to the said (*mortgagee*)
his executors administrators or assigns interest for the said sum
of £ or for so much thereof as shall for the time being
remain unpaid at the rate of £ per centum per annum by
equal half-yearly payments on the day of without
any deduction (except income tax) (*b*) *And the said (mortgagor)*

Covenant to
renew.

(*a*) If it be a lease for lives, say, “hereby granted or &c. unto the said
(*mortgagee*) his heirs and assigns henceforth for and during the lives of the
said (*nominees*) or the life of the survivor of them.”

If it be a lease for years, determinable upon lives, say, “hereby assigned
or &c. unto the said (*mortgagee*) his executors &c. henceforth for and during
the residue of the said term of years if the said (*nominees*) or either of
them should so long live.”

(*b*) That he the said (*mortgagor*) his heirs executors or administrators or
some of them shall and will at his their or one of their own proper costs
and charges from time to time at the usual and accustomed times for the
renewal apply to and obtain from a lease or leases of the lands here-

Another form
of covenant to
renew.

No.
CCCCLXVIII
*Renewable
Leaseholds.*

for himself his heirs &c. doth hereby covenant &c. with &c. the said (*mortgagee*) his executors &c. that he the said (*mortgagor*) his executors &c. will at all times so long as any principal and interest monies shall remain due upon this security (a) join and

To pay rents
and expenses
of renewal.

ditaments and premises hereby assigned or intended so to be with the appurtenances for a further term or terms of years and under such and the like rents covenants and agreements as are reserved and contained in the present lease so made and granted thereof as aforesaid and shall and will from time to time and at the usual times for such renewals as aforesaid continue to apply for the like new lease and leases during and so long as the said sum of £ or any part thereof shall remain or be chargeable upon the said premises And also that he the said (*mortgagor*) his heirs executors or administrators or some of them shall and will well and truly pay or cause to be paid unto the said as well the rent reserved by the said indenture of lease and the rent or rents to be reserved by any future lease or leases as all and every the fine or fines charges and expenses of such renewal or renewals as aforesaid which said new lease or leases so to be made and granted of the said premises as aforesaid shall immediately upon the making and executing thereof be from time to time assigned and transferred by the said (*mortgagor*) his executors administrators or assigns unto the said (*mortgagee*) his executors administrators or assigns under the like covenants provisoes and agreements as are in these presents expressed and contained of and concerning the said lease and premises hereby assigned or intended so to be And moreover that in case the said (*mortgagor*) his heirs executors or administrators shall decline or neglect to apply for and obtain such new lease or leases at the usual and accustomed times for applying for the same or within the space of six calendar months then it shall and may be lawful to and for the said (*mortgagee*) his executors administrators or assigns to apply for and obtain the same from

Power for
mortgagee to
renew.

and to pay the fine or fines and all other the charges and expenses of such renewal or renewals all which said fines charges and expenses with interest for the same after the rate of £ for every £100 for a year from the time or times of paying or advancing the same shall be charged upon the said premises and every part thereof so conveyed by the said (*mortgagor*) unto and to the use of the said (*mortgagee*) and his heirs as aforesaid And that no part of the said hereditaments and premises comprised in any such new lease or leases shall be redeemed or redeemable by the said (*mortgagor*) his heirs executors or administrators or any of them but upon payment as well of all and every the sum and sums of money which shall be advanced and paid by the said (*mortgagee*) his executors administrators and assigns for obtaining such renewal or renewals together with interest for the same from the time or times of advancement thereof as aforesaid as of the said principal sum of £ and interest.

Covenant to
renew.

(a) Or thus, "and as often as the said hereinbefore recited indenture of lease shall come in course to be renewed do his and their utmost endeavours to procure a good and effectual new lease to be granted to him the said (*mortgagee*) his executors &c. of the aforesaid premises with the appurtenances at and under the like rents and covenants by which the same are now respectively holden including a like covenant to renew And shall &c. pay all fines and premiums therefore and shall and will join in all such acts as shall be

concur with the (*mortgagee*) his executors administrators or assigns in all lawful and necessary acts deeds matters and things

No.
CCCCLXVIII
*Renewable
Leaseholds.*

necessary and expedient for the purpose of such renewal *And further* that in case the said (*mortgagor*) his executors or administrators shall after notice in writing to him or them given by the said (*mortgagee*) his executors administrators or assigns requiring him or them to do his endeavours to obtain such renewal refuse or neglect so to do and to pay the fines fees and other expenses incidental to such renewal it shall be lawful for but not obligatory upon the said (*mortgagee*) his executors administrators or assigns at his or their sole discretion to effect such renewal in his or their name or names or otherwise and in that case every such new lease and the premises to be thereby demised shall remain and be a security to the said (*mortgagee*) his executors administrators and assigns as well for the payment of all monies paid by him them or any of them for the fines fees and expenses of such renewal with interest for the same at the rate aforesaid from the time of his or their paying the same respectively as for payment of the said principal sum of £ and the interest thereon or such part thereof respectively as shall then remain on the security of these presents."

Power for
mortgagee to
renew.

If it be a lease for years, determinable upon lives and not renewable, then, instead of the preceding covenant, say, "*And it is hereby further declared &c.* that in case either of them the said (*nominees*) shall depart this life while the said principal and interest or any part thereof shall remain due upon this security it shall be lawful for the said (*mortgagee*) his executors administrators or assigns to insure and keep insured in his own name or names in any one of the public insurance offices in the city of London or Westminster the sum of £ or any less sum on the life of the survivor of them the said (*nominees*) And all sums of money which shall become due and payable to the said (*mortgagee*) his executors administrators or assigns upon under or by virtue of any such insurance shall be held by him or them upon trust in the first place to deduct and retain the costs charges and expenses incident to the procuring and keeping on foot such insurance and in the next place to retain deduct pay and satisfy unto and for himself his executors administrators and assigns the said principal sum and interest hereby secured And after such deductions and payments to pay the overplus (if any) unto the said (*mortgagor*) his executors administrators and assigns *And it is hereby further declared &c.* that all premiums and expenses together with interest thereon shall stand and be charged upon the said premises and that the same shall not be redeemed &c.," *ante*, p. 1182.

Power to in-
sure life of
nominee.

Where it is a renewable lease for lives, there may be a proviso as before, enabling the mortgagee to renew, by inserting fresh lives as he thinks fit, or a covenant on the part of the mortgagor as follows, "*And the said (mortgagor)* for himself &c. doth covenant &c. that in case any or either of the nominees in the said hereinbefore in part recited lease or in any future lease of the said premises hereafter to be made in pursuance of these presents shall happen to die whilst the said principal sum and interest or any part thereof shall remain due and unsatisfied he the said (*mortgagor*) his executors administrators or assigns shall at his and their own costs and charges as often as any death shall happen renew or cause to be renewed the said lease and insert such life

Covenant to
renew in case
of death of
nominee.

No.
CCCCXLVIII
*Renewable
Leaseholds.*

Power for
mortgagee to
renew.

whether the same be by surrender or otherwise for obtaining the renewal of the subsisting lease for the time being of the afore-said premises unto the said (*mortgagee*) his executors administrators or assigns *Subject* to the subsisting right title or equity of redemption of him the said (*mortgagor*) his executors administrators or assigns under or by virtue of these presents *And* in case the said (*mortgagor*) his executors or administrators shall after notice in writing to him or them given by the said (*mortgagee*) his executors administrators or assigns requiring him or

or lives as the said (*mortgagee*) his executors administrators or assigns shall nominate or appoint *And* shall &c. convey the said renewed lease unto the said (*mortgagee*) his heirs and assigns and shall &c. bear and pay all fines and other charges and expenses of or for such renewals and conveyances respectively *And* that the premises comprised in these presents and in any such new lease shall from time to time stand charged &c.," *ante*, p. 1183.

Recital as to
agreement to
insure life.

Where it is a lease for the life of the mortgagor, and the insurance is effected in his own name, then, instead of the above, say, "*And whereas* upon the treaty for the said loan it was agreed that for the more effectually securing the repayment of the principal and interest the said (*mortgagor*) should insure the sum of £ upon his life (which he has accordingly done) and that the benefit of the said insurance should be assigned to the said (*mortgagee*) in manner hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said agreement and for the considerations hereinbefore expressed he the said

Assignment of
policy.

(*mortgagor*) Doth hereby bargain sell and assign unto the said (*mortgagee*) his executors, &c. *All* that the deed-poll or policy of insurance &c. [see ASSIGNMENTS, *ante*, pp. 412, 413] *With* full power &c. [see *Power of Attorney*] *To have hold* receive perceive take and enjoy the said deed-poll instrument or policy of insurance and all and singular other the premises hereby lastly assigned or otherwise assured or intended so to be together with all sums which shall become due or recoverable upon or by virtue of the same and all benefit and advantage to be had or derived therefrom unto the said (*mortgagee*) his executors &c. *Subject* nevertheless to the proviso or agreement for redemption hereinbefore contained *And* the said (*mortgagor*) for himself his heirs &c. doth covenant" (*ante*, pp. 413, 414) If the insurance is effected by the mortgagee, then say, "*Whereas* upon the treaty for the said loan it was agreed that the said (*mortgagee*) should insure and keep insured the life of the said (*mortgagor*) in the sum of £ *And* he hath accordingly effected an insurance in office in the said sum of £ *Now this Indenture further witnesseth* That for the considerations hereinbefore expressed He the said (*mortgagor*) for himself &c. doth covenant &c. that the said premises shall stand charged and chargeable with and be a security for the payment of all premiums and expenses which he the said (*mortgagee*) his executors &c. shall pay bear &c. (to the amount of £ and no more) together with interest for the same *And* shall not be redeemed &c. *And also* that he the said (*mortgagor*) shall and will well and truly pay all such premiums and sums of money which the said (*mortgagee*) shall expend in respect of such insurance or in anywise relating thereto."

To pay premium.

them to join and concur in any such acts as aforesaid for the purpose aforesaid refuse or neglect so to do it shall and may be lawful for the said (*mortgagee*) his executors administrators and assigns at his and their sole discretion by surrender assignment or otherwise to obtain and procure a renewal or renewals from time to time of the subsisting lease of the said premises subject to such right of redemption as aforesaid *And* it is hereby declared and agreed that all fines fees costs and charges of the said (*mortgagee*) his executors administrators or assigns in or about the procuring or obtaining of such renewal or renewals together with interest for the same after the rate aforesaid from the time or respective times of the payment of such costs and charges to the amount of £ and no more shall stand charged and be chargeable upon the said premises and the same shall not be redeemed and redeemable until payment by the said (*mortgagor*) his executors administrators or assigns unto the said (*mortgagee*) his executors administrators and assigns as well of such costs and charges to the amount aforesaid as of the said principal sum of £ and interest intended to be hereby secured *And also* that he the said (*mortgagor*) his executors administrators and assigns shall and will pay unto the said (*mortgagee*) his executors administrators and assigns all sums of money which the said (*mortgagee*) his executors administrators or assigns shall pay or expend in or about such renewals or any thing relating thereto with interest as aforesaid [*Power of Sale, if any, should follow here, see ante, pp. 1145—1148, 1152—1154, the subject matter for sale should be referred to as*] the hereditaments and premises hereby assigned or intended so to be or which may be comprised in any such renewed lease as aforesaid with the benefit of the covenant for renewal contained in the present or any subsisting lease of the said premises for the time being or any part or parts thereof [*Covenants by the mortgagor that the lease is valid, that rent and covenants have been paid and performed for right to assign for quiet enjoyment after default, free from incumbrances and for further assurance, ante, pp. 1177, 1178*] *And further* that he the said (*mortgagor*) his executors or administrators shall and will so long as any money shall remain on the security of the said premises hereby assigned or intended so to be pay the rent and observe and perform all the covenants and conditions in the hereinbefore recited indenture of lease or any renewed lease as aforesaid respectively reserved and contained and on the part of the lessee

No.
CCCCLXVIII
*Renewable
Leaseholds.*

Expenses of
renewal
charged on
premises.

Power of sale.

Covenant for
payment of
rent and ob-
servance of
covenants.

No.
CCCCCLXVIII
*Renewable
Leascholds.*

his executors administrators or assigns to be paid observed and performed and indemnify the said (*mortgagee*) his heirs executors administrators and assigns against all actions suits proceedings costs damages claims and demands which may be incurred or sustained by reason of the nonpayment of the rent or any part thereof or the breach nonobservance or nonperformance of the said covenants and conditions or any of them *In witness &c.*



No.
CCCCCLXIX.
By Trustees.

No. CCCCLXIX.

*Mortgage by Trustees for a Term of Five Hundred Years
for raising Portions.*

Obs. If the tenant for life, heir, or reversioner under the limitations of the deed or will, be of age, it is desirable to make him a party of the third part.

Recital of set-
tlement.

This Indenture made &c. Between (Trustees) of &c. of the first part (Mortgagee) of &c. of the second part and A. B. of &c. (the owner of the estate subject to the term) of the third part Whereas by indentures of lease and release &c. and made between &c. purporting to be a settlement in contemplation of a marriage then intended and afterwards solemnized between &c. the lands and hereditaments hereinafter described were among other things conveyed and assured to the use of the said (settlor) and subject thereto to the use of the said (T.) their executors administrators and assigns for and during the term of &c. but upon the trusts nevertheless thereafter declared concerning the same and subject thereto to the use &c. And in the same indenture it is declared that the said lands and hereditaments were so limited to the use of the said (T.) their executors &c. for the term of years as aforesaid Upon trust by and out of the rents issues and profits thereof or by sale demise or mortgage of the said hereditaments or a competent part thereof or by any other lawful ways and means whatsoever to levy and raise any sum or sums of money not exceeding in the whole the sum of £ for the provision of younger sons and daughters (if any) of the said intended marriage by way of portions on their respectively attaining the age of twenty-one years as to sons and at that age or marriage as to daughters And it was by the now reciting indenture further declared that the receipts of trustees should be valid discharges and that purchasers or mortgagees should not be answerable or accountable

Trustees em-
powered to
raise portions
by mortgage.

for the application or nonapplication or misapplication of such purchase or mortgage money *And whereas* the said (*father*) hath departed this life leaving A. B. an eldest son and C. B. and D. B. him surviving *And whereas* the said C. B. and D. B. have requested the said (*T.*) to pay them their said portions *And whereas* the said (*T.*) for the purpose of raising the sum of £ have applied to the said (*M.*) to advance and lend them &c. the same which he hath consented to do on having the repayment thereof secured to him in such manner as hereinafter appears *Now this Indenture witnesseth* That in consideration of the sum of &c. to the said (*T.*) in hand &c. by the said (*M.*) &c. the receipt &c. They the said (*T.*) by virtue and in exercise and execution of the powers and trusts reposed in them in and by the said hereinbefore in part recited indenture of settlement and of all other powers enabling them in that behalf and with the consent and at the request and by the direction of the said A. B. testified by his being a party to and sealing and delivering of these presents *Do* and each of them *Doth* by these presents assign transfer and set over and the said A. B. doth hereby confirm unto the said (*M.*) his executors administrators and assigns *All those* &c. or otherwise howsoever the said messuages lands tenements and hereditaments or any of them now are or is or heretofore were or was situated tenanted called known described or distinguished and all other the messuages lands tenements and hereditaments comprised in the said term of years Together with all houses &c. And all the estate &c. of (*T.*) *To* have &c. for and during all the residue and remainder of the said term of years limited and created of and in the same hereditaments in and by the said hereinbefore in part recited indenture of settlement and which is now to come and unexpired *Subject* nevertheless to the proviso or agreement for redemption hereinafter contained (that is to say) *Provided always* and it is hereby agreed and declared that if the said (*T.*) their executors administrators or assigns or the said A. B. or other the person or persons for the time being entitled to the remainder or reversion of the hereditaments comprised in the said term of years immediately expectant on the determination of the same term shall on the day of next pay or cause to be paid to the said (*M.*) his executors administrators or assigns the sum of £ with interest for the same in the meantime after the rate of £ per cent. per annum without any deduction whatsoever (except income tax) Then

No.
CCCCCLXIX.
By Trustees.
Death of the
father, &c.

Testatum.

Habendum.

Proviso for
avoidance of
the assignment.

No.
CCCCCLXIX.
By Trustees.

and in such case the said (*M.*) his executors administrators or assigns shall immediately thereon or at any time thereafter at the request and at the expense of the said A. B. or other the person or persons making such payment as last mentioned surrender or assign the same term of years in such manner and for such intents and purposes as the person or persons making such payment as aforesaid shall direct or appoint free from all charges and incumbrances made or created by the said (*M.*) his executors administrators or assigns in the meantime [*Several covenant by trustees against incumbrances In some cases a covenant by tenant for life for the payment of such interest as shall accrue in his lifetime In other cases the covenant for payment and other covenants in pp. 252, 253, ante, are inserted*] *In witness &c.*

No.
CCCCCLXX.
*Policy of
Insurance
(Assignment).*

No. CCCCCCLXX.

*Assignment of a Policy of Insurance by way of Collateral
Security (a).*

Obs. As to life insurances, see *ante*, ASSIGNMENTS, pp. 410, 411.

Recital of
policy.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* by a certain deed poll or instrument in writing under the hands and seals of three of the directors of Company for the Insurance of Lives numbered and bearing date &c. the said (*assignor*) hath insured his life in the sum of £ *And whereas* the said (*mortgagor*) being indebted unto the said (*mortgagee*) in the sum of £ it hath been agreed by and between the said parties hereto that for the more effectually securing the repayment of the same sum the said policy of insurance should be assigned to the said (*assignee*) in manner hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum of £ so due and owing to the said (*assignee*) as the said (*assignor*) doth hereby acknowledge He the said (*assignor*) *Doth* hereby bargain sell and assign unto the said (*mortgagee*) his executors administrators and assigns *All that* the said deed poll or instrument in writing and the full benefit and advantage thereof and the sum of £ thereby assured and all and every

Agreement to
assign policy.

(a) See No. CXCIV., *ante*, pp. 412—414, Assignment of a Policy of Assurance on a Life.

sums and sum of money which by way of bonus or otherwise shall become due and payable upon or by virtue of the said policy of insurance And all the estate right title interest property benefit claim and demand whatsoever both at law and in equity of him the said (*mortgagor*) of in to and out of the same Together with all powers remedies and means whatsoever requisite or necessary for suing for recovering receiving and giving effectual discharges for the said monies and premises hereby assigned or intended so to be *To have* hold receive and take the said policy of insurance and all sums of money to become payable thereupon and all other the premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns henceforth for his and their own proper use and benefit *In trust* nevertheless as a pledge or security to him the said (*mortgagee*) his executors administrators and assigns for the repayment to him or them of the said sum of £ so due and owing to him the said (*mortgagee*) as aforesaid with interest for the same after the rate and at the day or time in or by the proviso hereinafter expressed and contained for the payment thereof (that is to say) *Provided always* and it is hereby declared and agreed by and between the parties hereto that if the said (*assignor*) shall pay unto the said (*mortgagee*) his executors administrators or assigns the said sum of £ and interest for the same after the rate of £ for every £100 by the year at on the day of next ensuing without any deduction or abatement on any account whatsoever Then this present assignment and every article clause matter or thing herein contained shall be absolutely void to all intents and purposes whatsoever *Provided also* that in case default shall be made in the payment of the said principal and interest at the day and in manner hereinbefore appointed for the payment thereof And the said sum of £ or any part thereof and the interest thereof shall remain due and unpaid at the time of the decease of the said (*assignor*) it shall and may be lawful for the said (*assignee*) his executors &c. to recover and receive all and every the sum or sums of money payable or recoverable upon or by virtue of the said policy of insurance And thereout to pay and indemnify himself and themselves so much of the said sum of £ and interest as shall then remain due and owing to him or them together with all costs charges and expenses which he or they shall pay bear or be put unto in or about the recovery and receipt thereof and to pay the surplus of such monies unto the

No.
CCCCCLXX.
*Policy of
Insurance
(Assignment).*

Habendum.

Proviso for redemption.

On default of payment of mortgage.

No.
CCCCCLXX.

Policy of
Insurance
(Assignment).

Covenants from
assignor.

To pay prin-
cipal and in-
terest.

Done no act to
incumber.

To keep up
policy.

executors administrators or assigns of the said (*assignor*) And the said (*assignor*) for himself his heirs executors administrators and assigns doth hereby covenant with the said (*assignee*) his executors administrators and assigns in manner following (that is to say) That he the said (*assignor*) his executors administrators or assigns shall and will &c. [*pay principal and interest*, see *ante*, p. 1159] And also that he the said (*assignor*) hath not at any time heretofore made done executed or willingly suffered or permitted any act matter or thing whereby or by means whereof the said policy of insurance hereby assigned or intended so to be shall or may be avoided charged or incumbered in any way whatsoever or whereby the said (*assignee*) his executors administrators or assigns shall or may be hindered or prevented from recovering or receiving all sums of money to become payable upon or by virtue of the said policy And that he the said (*assignor*) shall and will at his own costs and charges from time to time and at all times during the continuance of this security pay or cause to be paid all the premiums or sums of money payable upon the said policy of insurance so that the life of the said (*assignor*) shall and may be henceforth well and regularly kept insured in the said sum of £ at the least so long as the said principal sum or any part thereof and the interest thereof shall remain due and owing to the said (*assignee*) his executors administrators or assigns upon the security of these presents And shall and will at all times when thereunto required by the said (*assignee*) his executors administrators or assigns produce and show unto him or them the receipts or vouchers for the several payments made for such insurance And further that he the said (*assignor*) will not do or suffer anything whereby the said policy of insurance may be vitiated or become void or voidable or the said (*assignee*) his executors administrators or assigns may be prevented from receiving or recovering the money intended to be thereby assured or any part thereof And that if the said policy shall become voidable the said (*assignor*) will immediately at his own cost do all such things as may be necessary for restoring and keeping on foot the same And that if the said policy or any new policy or policies to be effected as hereinafter mentioned shall be vitiated or become void then and in such case and so often as the same shall happen the said (*assignor*) will immediately at his own cost effect or make furnish and do all such appearances statements certificates and things as shall be ex-

pedient for enabling the said (*assignee*) his executors administrators or assigns to effect a new policy or new policies of insurance on the life of the said (*assignor*) in the name or names of the said (*assignee*) his executors administrators or assigns and for a sum or sums equal in the whole to the sum or sums which would have then become payable under the policy or policies which shall have been so vitiated or become void upon the death of the said (*assignor*) And that every such new policy and the money to become payable under or by virtue of the same shall be subject to the proviso for redemption hereinbefore contained and be held and applied upon the trusts and for the purposes in and by these presents declared and expressed concerning the said policy of assurance hereinbefore assigned or intended so to be and the monies to become payable under or by virtue of the same And further that he the said (*assignor*) will during the continuance of the present security from time to time duly pay the said premium of £ and such other annual premium or premiums sum or sums of money (if any) as shall from time to time become payable for keeping on foot the said policy of insurance hereinbefore assigned and any new policy or policies of insurance to be effected as hereinbefore is provided and will make such payments on the first day on which the same respectively ought to be paid in order to keep the same policies respectively on foot and will forthwith deliver the receipt for every such payment to the said (*assignee*) his executors administrators or assigns And that if the said (*assignor*) shall neglect or refuse to make such payments as aforesaid or any of them at the time aforesaid then and in such case and so often as the same shall happen it shall be lawful for but not obligatory upon the said (*assignee*) his executors administrators or assigns to pay the said annual premium of £ and such other annual premium or premiums sum or sums of money (if any) as shall from time to time become payable for keeping on foot the said policy or policies of insurance or any of them And further that he the said (*assignor*) his heirs executors or administrators will from time to time on demand pay or cause to be paid unto the said (*assignee*) his executors administrators or assigns every such sum of money as shall have been paid by him or them in or towards payment of the said annual premium of £ or any other such annual premium or premiums sum or sums of money as aforesaid and all costs and expenses (if any) which shall have been paid by him or them in effecting any such new policy or

No.
CCCCCLXX.
*Policy of
Insurance
(Assignment).*

To pay pre-
miums.

Power for
mortgagee to
keep up in-
surances.

No.
CCCCLXX.
*Policy of
Insurance
(Assignment).*

Power to as-
sign.

Further as-
surance.

policies of insurance as aforesaid or otherwise in relation to the premises with interest for the same after the rate of five pounds per cent. per annum from the time or respective times of the same having been advanced or paid And that in the meantime and until the same shall be so paid with interest as aforesaid all and singular the said premises hereinbefore expressed to be assigned and the monies to become payable under or by virtue of the said policy hereinbefore assigned or intended so to be or under or by virtue of any new policy or policies to be effected in pursuance of the aforesaid provisions in that behalf shall stand and be charged with the payment as well of such sum or sums of money and the interest thereon as of the said sum of £ and interest And further that the said (*assignor*) hath in himself full power and lawful authority to transfer and assign the said policy of insurance and all sums of money and other the premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns in manner aforesaid according to the true intent and meaning of these presents And moreover that he the said (*assignor*) his executors administrators and assigns shall and will at all times hereafter so long as the said principal sum of £ or any part thereof or any interest thereon shall remain due at the reasonable request of the said (*assignee*) his &c. but at the costs and charges of the said (*assignor*) make do and execute all such other lawful acts for the more perfectly assigning the said policy as by the said (*assignee*) his executors administrators or assigns or his or their counsel shall be reasonably advised and required (*a*) In witness &c.

EQUITABLE MORTGAGE.

Obs. A mere deposit of title deeds upon an advance of money, without a word passing, gives an equitable lien, *Ex parte Langston*, 17 Ves. 227; *Ex parte Kensington*, 2 Ves. & B. 83; but it is obviously prudent to have some writing to explain the intentions of the parties in the form of an agreement, see Nos. LXXI., LXXII., *ante*, pp. 124—126, or in the simple form of a Memorandum, as underneath, to which are sometimes added an acknowledgment and a schedule.

(a) See Covenants by the Vendor of a Policy, *ante*, pp. 413, 414.

No. CCCCLXXI.

No.
CCCCLXXI.*Memorandum accompanying a Deposit of Title Deeds by way
of Pledge.*

Be it remembered That on the day of 18
the title deeds relating to certain messuages lands &c. situated
at in the county of as enumerated and specified in the
schedule hereunder written were delivered by (*mortgagor*) of &c.
to (*mortgagee*) of &c. in pledge to secure to the said (*mortgagee*)
his executors administrators and assigns the repayment of the
sum of £ this day lent and advanced by the said (*mort-*
gagee) to the said (*mortgagor*) and interest for the same sum
after the rate of £ for every £100 by the year to be com-
puted from the date hereof As witness the hands of the said
parties the day and year first above written.

Witness A. B.

(*Mortgagor*)(*Mortgagee*)

No. CCCCLXXII.

No.
CCCCLXXII.*Another in the Form of a Schedule.*

A Schedule of the several deeds and writings relating to a
certain messuage &c. situate at in the county of
delivered by (*mortgagor*) of &c. to (*mortgagee*) of &c. as a security
for the repayment by the said (*mortgagor*) his executors adminis-
trators or assigns to the said (*mortgagee*) his executors adminis-
trators or assigns of the sum of £ with interest at £
per cent. per annum (add schedule).

Witness A. B.

(*Mortgagor*)(*Mortgagee*)

Further Charges on Mortgaged Premises, see Nos.
CCCCXXIV., CCCCXXV., ante, pp. 975—978.

No.
CCCCLXXIII

*Transfer of
Mortgage for
Years.*

No. CCCCLXXIII.

Transfer of a Mortgage by Demise.

Obs. 1. When the mortgagor cannot be made a party the transfer is effected by an assignment of the mortgage debt and a conveyance of the mortgaged estate subject to the subsisting equity of redemption, with a covenant by the mortgagee against incumbrances. See No. CXCI., *ante*, pp. 402—406. In such a case notice of the assignment should be given to the owner of the equity of redemption.

2. When a mortgagor has charged or settled the equity of redemption, there should be an assignment of the mortgage debt and a conveyance of the lands by the mortgagee alone, subject to the existing equity of redemption. The mortgagee assigning should covenant against incumbrances. The mortgagor should enter into a new covenant with the transferee for payment of the principal and interest, to enable the latter to sue for the mortgage debt in his own name, but it would not avail much to insert new covenants for title and powers proceeding from the mortgagor which would not bind the estate or subsequent incumbrancers.

3. If the mortgagor can be made a party to the transfer and there is reason for supposing that there have been subsequent charges or dealings with the equity of redemption, the transfer may consist of an assignment of the mortgage debt to keep it on foot as a protection against mesne incumbrances which may have been created by the mortgagor, with a conveyance of the legal estate, with such other provisions as the nature of the case may require. See *Parry v. Wright*, 1 Sim. & Stu. 369; 5 Russ. 142; *Medley v. Horton*, 14 Sim. 222; *Otter v. Vaux*, 6 De G., M. & G. 638. Where there are no such charges or dealings, and the owner of the equity of redemption borrows a further sum, there may be a conveyance by the mortgagee and mortgagor of the lands discharged of the old mortgage, but subject to a new proviso for redemption with covenants for payment and title, and other powers and provisoes as in an original mortgage. See 2 Davidson's Conv., pp. 693, 694, 2nd ed.

4. As to the stamp on transfers of mortgages, see *ante*, pp. 1129, 1130.

This Indenture made &c. Between (Mortgagor) of &c. of the first part (Transferor) of &c. of the second part and (Transferee) of &c. of the third part Whereas by indenture bearing date &c. and made or expressed to be made between the said (M.) of the one part and the said (T.) of the other part It is witnessed that in consideration of the sum of £ to the said (M.) by the said (T.) paid the said (M.) did grant bargain sell and demise unto the said (T.) his executors administrators and assigns All that &c. To hold the same with the appurtenances from the day next before the day of the date of the now

No.
CCCCCLXXIII
*Transfer of
Mortgage for
Years.*

reciting indenture for the term of years thence next
ensuing *Subject* nevertheless to a proviso for redemption on
payment by the said (*M.*) his heirs executors &c. to the said (*T.*)
his executors administrators or assigns of the sum of £
and interest after the rate of £ per cent. per annum on
the day of next ensuing *And whereas* the said prin-
cipal sum of £ now remains due and owing to the said
(*T.*) upon and by virtue of the said hereinbefore recited mort-
gage security but all interest for the same hath been paid and
satisfied up to the day of the date of these presents
as the said (*T.*) doth hereby admit *And whereas* the said (*T.*)
having occasion for the said principal sum of £ hath ap-
plied to and requested the said (*transferee*) to advance and pay
him the same which he hath consented to do on having a
transfer of the said in part recited indenture made to him in
manner hereinafter expressed *Now this Indenture witnesseth*
That in consideration of the sum of £ at or before the ex-
ecution of these presents by the said (*transferee*) to the said (*T.*)
paid at the request and by the direction of the said (*M.*) tes-
tified by his executing these presents [in full satisfaction and
discharge of all monies now due and owing to the said (*T.*)
upon and by virtue of the hereinbefore recited indenture of
mortgage] the receipt of which sum the said (*T.*) doth hereby
acknowledge and from the same doth hereby acquit release
and discharge as well the said (*transferee*) as also the
said (*M.*) his heirs executors and administrators He the
said (*T.*) doth hereby assign unto the said (*transferee*) his
executors administrators and assigns all that the said sum of
£ secured by the said indenture of and all in-
terest henceforth to become due for the same And all the
estate right title interest claim and demand whatsoever both at
law and in equity of the said (*T.*) of in to or out of the said
premises or any of them or any part thereof together with full
power and authority to ask demand sue for recover and receive
and give effectual receipts and discharges for the said sum of
£ and interest in the name or names of the said (*T.*)
his executors or administrators *To have hold* receive and
take the said sum of £ and interest unto the said (*trans-*
feree) his executors administrators and assigns *And this Inden-*
ture also witnesseth That in further pursuance of the said agree-
ment and for the considerations aforesaid He the said (*T.*) at the
request and by the direction of the said (*M.*) testified as afore-
said *Doth* hereby assign unto the said (*transferee*) his executors

Assignment of
mortgage debt.

Assignment of
term.

No.
CCCCLXXIII
*Transfer of
Mortgage for
Years.*

Covenant
against incum-
brances.

administrators and assigns all and singular the messuages farms land tenements and hereditaments comprised in and demised by the said indenture of as hereinbefore is mentioned with their rights easements and appurtenances And all the estate right title and interest of the said (T.) of in to out of and upon the same premises or any of them or any part thereof *To have and to hold* the said hereditaments and all and singular other the premises hereinbefore described and intended to be hereby assigned unto the said (*transferee*) his executors administrators and assigns henceforth for and during all the residue and remainder now to come and unexpired of the said term of years therein and for all other the estate term and interest of the said (T.) *Subject nevertheless* to such right of redemption as the same hereditaments and premises are now subject or liable to on payment of the said principal sum and interest henceforth to grow due thereon And the said (*transferor*) doth hereby for himself his heirs executors and administrators covenant with the said (*transferee*) his executors administrators and assigns that the said (*transferor*) hath not at any time heretofore made done committed or executed or knowingly and willingly permitted or suffered or been party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof he is in anywise prevented or hindered from assigning the said sum of £ and the interest to become due thereon or any part thereof unto the said (*transferee*) his executors administrators and assigns in manner aforesaid or whereby or by reason or means whereof the said hereditaments and premises hereby conveyed or any of them or any part thereof are is can shall or may be impeached charged affected or incumbered in title estate or otherwise howsoever [*Covenant by (M.) with (transferee) for payment of principal and interest, see ante, p. 1159, and for further assurance*] *In witness &c.*



No.
CCCCLXXIV.
*Transfer
of Mortgage in
Fee.*

No. CCCCLXXIV.

Transfer of a Mortgage in Fee where a further Sum is advanced to the Mortgagor.

Recitals of
mortgage being
due.

This Indenture made &c. Between (transferor) of the first part (mortgagor) of the second part and (transferee) of the third part Whereas [recite mortgage in fee] And whereas the said principal sum of £ still remains due and owing to the said

(*transferor*) by virtue of the hereinbefore recited mortgage but all interest for the same hath been fully paid and discharged up to the day of the date of these presents as they the said (*mortgagor and transferor*) do hereby respectively acknowledge And whereas the said (*mortgagor*) being desirous of paying off the said sum of £ so remaining due and owing to the said (*transferor*) and of raising the further sum of £ to supply his other occasions hath applied to and requested the said (*transferee*) to lend and advance him the said (*mortgagor*) the sum of £ which the said (*transferee*) hath agreed to do accordingly upon having the repayment thereof with interest secured by a mortgage of the said and hereditaments in manner hereinafter expressed (a) Now this Indenture witnesseth That in consideration of the sum of £ of lawful money of Great Britain paid by the said (*transferee*) to the said (*transferor*) at or before the execution of these presents at the request and by the direction of the said (*mortgagor*) testified by his executing these presents (being in full satisfaction and discharge of all monies owing to the said (*transferor*) upon and by virtue of the said hereinbefore recited mortgage) the receipt of which said sum of £ he the said (*transferor*) doth hereby acknowledge and therefrom doth hereby release and discharge the said (*transferee*) his executors administrators and assigns and also the said (*mortgagor*) his heirs executors and administrators And also in consideration of the sum of £ of like lawful money at the same time paid by the said (*transferee*) to the said (*mortgagor*) the payment and receipt of which said several sums of £ and £ making together the sum of £ the said (*mortgagor*) doth hereby acknowledge and therefrom doth hereby release and discharge the said (*transferee*) his executors administrators and assigns he the said (*transferor*) at the request and by the direction of the said (*mortgagor*) testified as aforesaid doth by these presents grant and convey and the said (*mortgagor*) doth by these presents grant and confirm unto the said (*transferee*) All that (*parcels*) Together with all houses &c. and the reversion &c. And all the estate right title use trust property claim and demand whatsoever at law and in equity of them the said (*transferor*) and (*mortgagor*) and each of them of in to or out of the same premises and every part thereof And also all

No.
CCCCLXXIV.
*Transfer
of Mortgage in
Fee.*
Of application
for loan.

Testatum.

(a) In a case of this kind where it is thought advisable to assign the mortgage debt the first operative part will be the assignment. See *ante*, pp. 403—405, 1195.

No.
CCCCLXXIV.

*Transfer
of Mortgage in
Fee.*

Habendum.

deeds evidences and writings whatsoever relating to or in any-
wise concerning the same hereditaments and premises or any
part thereof which they the said (*transferor*) and (*mortgagor*)
or either of them have or hath in their or either of their custody
or possession or can obtain without suit *To have and to hold* the
said and all and singular other the hereditaments herein-
before described and hereby granted or intended so to be with
their appurtenances unto the said (*transferee*) and his heirs to the
only proper use of him the said (*transferee*) his heirs and assigns
for ever freed and absolutely discharged of and from the said
proviso for the redemption thereof contained in the hereinbefore
recited indenture of mortgage and all equity thereupon but
subject nevertheless to the proviso for redemption hereinafter
contained (that is to say) [*Proviso for redemption Covenant by
transferor that he has not incumbered Covenant by mortgagor to
pay principal and interest that transferor and mortgagor or one
of them are seised have right to convey for quiet enjoyment after
default free from incumbrances and for further assurance Power
of sale, ante, pp. 1145—1148, 1152—1154*] *In witness &c.*

No.
CCCCLXXV.

*Transfer of
Mortgage.*

No. CCCCLXXV.

Notice of Transfer of Mortgage.

Obs. As to the necessity of this notice, see *ante*, *Transfer of a
Mortgage by Demise*, *Obs.* 1, p. 1194.

Sir

I hereby give you notice that I have by indenture bearing
date the day of last taken an assignment [*or*
“conveyance”] of the premises comprised in an indenture bear-
ing date the day of and made between you (*mort-
gagor*) of the one part and (*mortgagee*) therein described of the
other part purporting to be a mortgage made by you for securing
the payment of the sum of £ and interest for which assign-
ment [*or* “conveyance”] I have paid the sum of £ I there-
fore hereby require you to pay the same sum being the said
principal sum and a year’s interest thereon to me my executors
or administrators instead of to the said (*mortgagee*) his heirs exe-
cutors or administrators. (*Assignee*).

To Mr.

(*mortgagor*) of &c.

No. CCCCLXXVI.

No.
CCCCLXXVI.

Reconveyance of a Mortgaged Estate from the Heir at Law, and Reconveyance.
Executors of a deceased Mortgagor to a Mortgagor.

Obs. As to the stamp, see *ante*, p. 1131.

This Indenture made &c. Between (*heir*) heir at law of (*mortgagee*) late of &c. deceased of the first part (*executors*) of &c. executors named in the last will and testament of the said (*M.*) of the second part and (*mortgagor*) of &c. of the third part *Whereas* [*recite mortgage in fee (a) from mortgagor to mortgagee*] *Recitals.*
And whereas the said (*mortgagee*) departed this life in the year *Death and will of mortgagee.*
 &c. leaving the said (*H.*) his eldest son and heir him surviving having duly made and executed his last will and testament in writing bearing date &c. but without having by his said will or otherwise disposed of the legal estate then vested in him as (*mortgagee*) as aforesaid *And whereas* the said (*E.*) duly proved the said will in the Court of *And whereas* the said principal sum of £ is still due and owing to the said (*E.*) as executors as aforesaid but all interest upon or in respect of the same hath been duly paid up to the day of the date of these presents and the said (*mortgagor*) is desirous of paying off the said sum of £ and of having such reconveyance of the said mortgaged premises as is hereinafter contained *Now this Indenture witnesseth* *Testatum.*
 That in consideration of the sum of £ to the said (*E.*) as executors of the said (*mortgagee*) by the said (*mortgagor*) at &c. paid in full for all principal monies due and owing to the said (*E.*) executors as aforesaid the receipt whereof they the said (*E.*) do hereby acknowledge and from the same do acquit release and for ever discharge the said (*M.*) his heirs executors administrators and assigns He the said (*H.*) at the request and by the direction of the said (*E.*) testified by their executing these presents *Doth* hereby grant and convey And the said (*E.*) *Do* and every of them *Doth* hereby remise release and for ever quit claim unto the said (*mortgagor*) his heirs and assigns *All* and singular the and other hereditaments in the hereinbefore recited indenture comprised or expressed to be thereby granted or which now by any means are vested in the said (*H.*) under or by virtue of the same indenture with their

(a) For the variations in the recitals, where it is the reconveyance of a mortgage by demise, see *Transfer of a Mortgage by Demise*, No. CCCCLXXIII., p. 1194.

No.
CCCCCLXXVI.
Reconveyance.
Habendum.

rights easements and appurtenances and all the estate of them the said (*H.*) and (*E.*) of in &c. *To have and to hold* the said messuages &c. and all and singular other the premises hereby granted released or otherwise assured or intended so to be with their respective rights easements and appurtenances unto and to the use of the said (*mortgagor*) his heirs and assigns for ever freed and absolutely discharged of and from all principal monies and interest intended to be secured by the said recited indenture and of and from all actions suits accounts reckonings claims and demands whatsoever either at law or in equity for upon account or in respect of the said principal monies and interest or for upon account or in respect of the said recited indenture or of any act deed matter or thing in anywise relating to the premises And each of them the said (*H.*) and (*E.*) [*Several covenant that they have done no act to incumber, see ante, p. 405*] *In witness &c.*

Done no act to
incumber.

NOMINATIONS.

See *ante*, APPOINTMENTS, ARBITRATION, and *post*, POWERS OF ATTORNEY.

NOTES, ORDERS, WARRANTS, &c.

BOUGHT-AND-SOLD NOTES.

Obs. Bought-and-sold notes, which are delivered by the broker to his principals, constitute the contract, and are the proper evidences thereof under the Statute of Frauds, *Rucker v. Commey*, 1 Esp. 105, recognized in *Cumming v. Roebuck*, Holt, N. P. C. 172; and although in *Heyman v. Neale*, 2 Campb. 337, it was held that an entry in the broker's book constituted the original contract, and the bought-and-sold notes were merely copies of it, yet it is now settled that bought-and-sold notes are the contract, *Goom v. Affalo*, 6 B. & C. 117, particularly where there is no entry in the broker's book, *Dickenson v. Lilwal*, 1 Stark. N. P. C. 128, or where the entry is not signed, *Powell v. Divett*, 15 East, 29; and where there are no bought-and-sold notes it appears that the entry, if signed, will be sufficient to bind the parties, *Grant v. Fletcher*, 5 B. & C. 436; but the bought-and-sold notes must correspond, *Thornton v. Kempster*, 1 Marsh. 355;

S. C. 5 Taunt. 786; and if they differ materially no contract will arise, *Powell v. Divett, ub sup.*; see *Sieverright v. Archibald*, 17 Q. B. 103; *Humfrey v. Dale*, 5 Jur., N. S. 191; Smith's Mercantile Law, 507, 508, 6th ed.; Chitty on Contracts, 357, 358, 5th ed.; and the broker's book is not evidence to show which is correct, *Thornton v. Meux*, Moo. & Malk. 43; but a mistake in both notes as to the seller's name will not vitiate the contract if it cannot be shown that any one has been prejudiced thereby, *Mitchell v. Lapage*, Holt, N. P. C. 253.

Bought-and-Sold Notes.

No. CCCCLXXVII.

Sold-Note of Wool.

London 16th October, 18

Sold for your account to Messrs. D. P. & Co. the following parcels of Spanish wool (a few bags more or less) of each mark viz. [specifying the bags and the rate of price] customary tare and allowance (a) To be paid for by acceptances at two four six and eight months.

E. B. (broker).

No.
CCCCCLXXVII.
Sale of Wool.

No. CCCCLXXVIII.

Sale-Note of Wine.

1st January 18

Sold for account of Mr. James Read

T. J. H.

Seven pipes Guernsey red wine ex Prince Regent at 47*l.* per pipe as they lie in the London Docks To be paid for by Mr. E.'s bill on Mr. P. Y. of 328*l.* 12*s.* due in December next without recourse to the buyer in case of its not being paid (b).

A. B. (broker).

No.
CCCCCLXXVIII.
Sale of Wine.

(a) To this note was added, at the instance of the seller without the knowledge of the purchaser, the following memorandum: "Such part as may be damaged to be taken at such allowance as shall be settled by two experienced brokers," which was held to be such a material alteration as vitiated the contract, *Powell v. Divett, ub sup.*

(b) It was held that, notwithstanding these words, the buyer, though not liable to an *indebitatus assumpsit*, might be liable to an action of trover for the recovery of the wines, or an action of deceit, if he knew that the bill was worth nothing, *Read v. Hutchinson*, 3 Campb. 352.

No.
CCCCCLXXIX.
Sale of Hemp.

No. CCCCLXXIX.

Sale-Note of Hemp.

February 18

Sold for Mr. H. S. to Mr. M. B. about 32 tons (more or less) of Riga Rhine hemp on arrival (a) per Fanny and Alinera at £ per ton &c. from the landing scale.

A. B. (*broker*).



No.
CCCCCLXXX.
Sale of Bacon.

No. CCCCLXXX.

Bought-Note of Bacon.

March 28 18

Bought of R. & Co. through T. P. 100 bales of prime singed bacon at s. per cwt. free on board Weight 24 to 28 per 10 bales to be shipped next month and drawn for sixty days from the date of the bill of lading Warranted weight upon landing deficiency (if any) to be settled by Mr. P.

A. O. (*b*)



No.
CCCCCLXXXI
*Sale of
Goat Skins.*

No. CCCCLXXXI.

Bought-Note of Goat Skins.

London 27th April 18

Bought of Mr. S. Z. of street 289 bales of goat skins from Mogadore per Commerce Captain J. H. containing five dozen in each bale (c) at the rate of s. per dozen to be taken as they now lie with all faults paid for by good bills at five months.

C. D. (*broker*).

(a) Held that the words "on arrival" means on the arrival of the goods which the ship is expected to bring, and if the ship arrives empty without any default on the part of the vendor, he is not liable to the purchaser for the non-delivery of the goods, *Boyd v. Siffkin*, 2 Campb. 327.

(b) Held that the vendee who signed this note was bound by it, although it differed from the note sent to the vendor, *Rowe v. Osborne*, 1 Stark. 140; see *Obs. supra*.

(c) As by the usage of the trade it is the duty of the seller of goat skins to count them over to see how many each bale actually contains, held that there has been no transfer of the property to the purchaser until this has been done, and that the skins being consumed the loss must fall on the seller, *Zangury v. Furnell*, 2 Campb. 240.

No. CCCCLXXXII.

No.
CCCCLXXXII.
Bill of Parcels.

Bill of Parcels.

Mr. J. M.

London 22 November 18

Bought of J. S.

	Tons	cwt.	qrs.	lbs.	
Teneriffe barilla w ^g	50	5	1	12	
Dft 12lb. per ton	0	5	1	12	
Net	50	0	0	0	at £ per ton
					in bond . }
Discount					
					£

Ex Prince Royal

Payable per approved bills not exceeding two months.

DELIVERY NOTES OR ORDERS.

Obs. A delivery note or order is either made to persons generally, or it is that particular order which is lodged with the proper officer of the docks, whose duty it is to execute such orders after he has ascertained that the duties have been paid. The effect of a delivery note, when lodged with a wharfinger or warehouseman and entered in his book, is to transfer the property to the purchaser in whose name it is entered, and the wharfinger becomes the agent of the purchaser, *Harman v. Anderson*, 2 Campb. 243, recognizing *Hurry v. Mangles*, 1 Campb. 452, unless there is any thing to be done to the goods previous to their delivery, as to weigh them and the like, *Withers v. Lyss*, 4 Campb. 237; but the acceptance of the delivery order, without lodging it at the docks, is not sufficient to bind the vendee within the Statute of Frauds, *Bentall v. Burn*, 3 B. & C. 423; *Farina v. Horne*, 16 M. & W. 119. See Chitty on Contracts, 346, 348, 5th ed.

No. CCCCLXXXIII.

No.
CCCCLXXXIII.
Order (Goods).

Order for Delivery of Goods (a).

To Messrs. A. and W. B. Minories

Please to deliver to the order of Messrs. D. and L. the under-mentioned goods [*enumerating the goods*] Charges from the 27th February to be paid by Messrs. D. & Co. E. C.

(a) As to the effect of this order, see *Devereux v. Barclay*, 2 B. & A. 702; *Harman v. Anderson*, *ub. sup.*

No.
CCCCLXXXIV.
Delivery Order.

No. CCCCLXXXIV.

Delivery Order.

Messrs. L. & Co. (a)

Please to weigh and deliver to Mr. D. B. or order our transparent rosin in mats (about 30 tons more or less).

W. & Co.



No.
CCCCLXXXV.
Delivery Note.

No. CCCCLXXXV.

Delivery Note to London Dock Company (b).

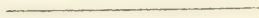
London 7th January 18

To the Superintendent of the London Docks.

Please to weigh deliver transfer or rehouse to the order of Messrs. T. & Co. the under-mentioned goods they paying charges to the instant.

(Signed)

R. J. & Co.
B. F.



DOCK CHECKS OR WARRANTS.

Obs. When goods are warehoused in the docks, as they usually are, dock checks or warrants are given to the owner as a recognition of his title to the goods. The former of these is merely a certificate of the lodging of the delivery order, which is necessary to bind the vendee under the Statute of Frauds, *Bentall v. Burn*, 3 B. & C. 423, *ub. sup.* The dock warrant transfers the absolute property, and is now recognized as one of the valuable securities, (see the Factors Act, 6 Geo. 4, c. 94, s. 6; 5 & 6 Vict. c. 39, s. 4, and the Larceny Act, 7 & 8 Geo. 4, c. 29, ss. 49, 51, 52) The dock warrant is considered, like a bill of lading, to pass by mere indorsement and delivery.

-
- (a) As to the effect of this word in the order, see *Withers v. Lyss*, *ub. sup.*
(b) See *Holt*, N. P. C. 278.

No. CCCCLXXXVI.

*Form of Dock Check (a).*No.
CCCCLXXXVI.
Dock Check.

This is to certify that the under-mentioned order for goods deposited in warehouse No. of the West India Dock Company has this day been lodged with me

No. of Order.	Marks of Lots.	Description of Goods.	Ship.	Master.	By whom granted.	In whose favour.
1192 & 3	M. A. $\frac{1}{7}$ E. $\frac{1}{3}$	52 casks Molasses.	William.	L. entered July, 1840.	J. K. & Co. and C. D. & Co.	F. A. & Co.

Given under my hand this 4th February 1842

West India Dock-house

(Signed) J. T. H. clerk.

N.B.—To prevent delay parties lodging orders for the delivery of goods at the dock-house are desired to present at the same time this check filled up and ready for insertion of the number of the order and the clerk's signature which will greatly promote dispatch.

No. CCCCLXXXVII.

*Warrant of Transfer.*No.
CCCCLXXXVII.
Dock Warrant.

Number of order 105

Ship's rotation No. 9

West India Dock warehouse No. 8

Warrant for 20 chests lot of tea imported in the ship
Hyder Ali Captain D. from C. Entered by A. B. on the 31st
December 1841

N.B.—Rent commences 14th January 1842

Examined and entered the day of
Cargo ledger 10 fol. 343.

T. R. clerk.

(a) As to the purpose of this instrument, see *Obs. supra.*

No.
CCCCCLXXXVII.
Dock Warrant.

No. London 1st January 1842
Deliver the above-mentioned goods to C. D. or assigns by
indorsement thereon.

A. B.

N.B.—This order must be presented at the West India Dock-house regularly assigned by indorsement and all charges are to be paid before the goods are taken away.

Shipping Order, see post, SHIPPING.

NOTICES.

1. *Definition.*
2. *When required.*

3. *Different Kinds of Notices.*
In Deed.
In Law.

Definition.

SECT. 1. Notice is the making something known that a man was or might be ignorant of before, and the party who gives the same shall have the benefit thereof, Co. Litt. 309, a.

When required.

2. Notice is required to be given in many cases by law, or by stipulations in deeds, to justify proceedings where anything is to be done or demanded; as in the case of appeals and the like; but none is bound to give to another person notice of that which such other may otherwise inform himself, or ought to take notice of, except such notice is directed by Act of Parliament, or the agreement of the parties.

Different kinds
of notices.

3. Notices are either in deed, when they are made by word or in writing, or they are in law, when they are implied in law; which distinction was formerly observed in respect to attornments, Litt. ss. 551, 558; Co. Litt. 309 a, 312 b. A similar distinction has been made in equity between actual notice and constructive notice, on the doctrine of which, see Sugd. V. & P. c. 17.

Notice of Abandonment of a Ship, see post, SHIPPING.

No. CCCCLXXXVIII.

Notice of Reserved Bidding.

Obs. For other forms, see *ante*, pp. 440, 441.

No.
CCCCLXXXVIII
*Reserved
Bidding.*

Mr. Auctioneer

We A. B. of &c. and C. D. of &c. the owners of the within named messuages tenements and hereditaments Do hereby nominate F. W. and R. N. both of &c. attornies and copartners jointly or each of them separately for us and in our names places and steads to make one reserved bidding for the whole of the same premises or for each lot in case the same shall be put up in lots at the time of sale in case the same be not sold by auction pursuant to the within advertisement beyond certain prices fixed upon between us and the said F. W. and R. N. in the way of reserved biddings for us and for our use only *As witness &c.*

NOTICES BY CARRIERS.

No. CCCCLXXXIX.

Form of a Public Notice of increased Charges at a Waggon Office.

No.
CCCCLXXXIX.
*Increased
Charges.*

Obs. The 11 Geo. 4 & 1 Will. 4, c. 68, has altered the law as regards the liability of common carriers, and consequently the notices now to be given by them must be altered conformably to the terms of the Act.

In pursuance of an Act of Parliament passed in the first year of the reign of King William the Fourth c. 68 intituled &c. [*here set out the title of the Act*].

Notice is hereby given That for any package to be conveyed for hire or to accompany the person of any passenger containing gold or silver coin of this realm or of any foreign state or any gold or silver in a manufactured or unmanufactured state or any precious stones jewellery watches clocks or timepieces of any description trinkets bills notes of the Governor and Company of

No.
CCCCXXXIX.
*Increased
Charges.*

the Bank of England Scotland and Ireland respectively or of any other bank in Great Britain or Ireland orders notes or securities for payment of money English or foreign stamps maps writings title deeds paintings engravings pictures gold and silver plate or plated articles glass china silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials furs or lace or any of them (a) to a greater amount in value than 10*l.* (b) the increased charge over and above the common and ordinary charge for carriage is as follows: For any distance not exceeding

For each pound sterling in value.

50	miles	the sum of one halfpenny.
75	„	„ three farthings.
100	„	„ one penny.
150	„	„ three halfpence.
200	„	„ seven farthings.
250	„	„ two pence.



No. CCCCXC.
*Increased
Charges, &c.*

No. CCCCXC.

Another Form.

On certain
goods.

In pursuance of an Act of Parliament (see *last Precedent*).

Notice is hereby given That for any package or luggage containing gold &c. (see *last Precedent*) to any greater amount than 10*l.* the increased charge over and above the common and ordinary charge for carriage is after the rate of 12*s.* 6*d.* for every 100*l.* declared value for any package containing china pictures or paintings an increased charge after the rate of 1*l.* for every 100*l.* declared value for any package containing glass an increased charge after the rate of 15*s.* for every 100*l.* declared value and the glass to be packed in the presence of the clerk agent or other servant of the carrier.

Provision as to
aqua fortis, &c.

Notice is also hereby given That any person sending aqua-

(a) It will be observed, on comparing the act with this notice, that the terms of the former have been strictly pursued, as required by the act itself.

(b) Before this act carriers usually limited their liability to 5*l.*; but they cannot now protect themselves by any general notice from the common law liability, when the goods are under the value of 10*l.*, although the act does not interfere with any special contract.

fortis spirit of vitriol or any other ardent spirits must write on the direction the contents or make the same known to the book-keeper at the time of delivery otherwise if any damage arise therefrom the proprietors of the waggons will look to the persons sending the same for indemnification All goods which shall be delivered for the purpose of being carried will be considered as general liens (*a*) and subject not only for the money due for the carriage of such particular goods but also to the general balance due from the respective owners to the proprietors of the waggons Goods suffered to remain in either of his warehouses more than forty-eight hours after their arrival will be at the sole risk of the respective owners thereof All goods left to be directed till called for will be sold at the expiration of one year to defray the expenses chargeable thereon Claims for damage must be made within three days after the delivery of the goods or the proprietor will not be answerable for the same Loss by leakage of casks will not be accounted for The proprietor will not be accountable for damage sustained by carriages of any description nor will he undertake the conveyance of any horse or other animal and should any horse or other animal be intrusted to the driver it must be at the risk of the person intrusting it.

No. CCCCXC.
Increased
Charges, &c.

No. CCCCXC1.

Notice to complete Contract for the Purchase of Oats.

No.
CCCCXC1.
To complete
Contract.

Sir

I hereby give you notice that the oats you agreed to purchase of me and to fetch away on or before (b) are now ready for delivery and I have therefore to request you on or before the day of instant to fetch away and pay for

(a) Carriers have not a general lien for carriage of successive packages, unless they expressly so stipulate, and communicate such stipulation to each customer, *Kirkman v. Shawcross*, 6 T. R. 14; *Rushford v. Hadfield*, 16 East, 519, and that in the most unqualified terms, *Wright v. Snell*, 5 B. & A. 350; and see further, 1 Chit. Gen. Pract. 492, *et seq.* See Chitty and Temple's Law of Carriers, pp. 109, 110.

(b) Although the purchaser of goods neglects, after notice, to carry them away, yet, unless there be a time stipulated, he cannot resell them; he can only charge him warehouse room, or bring an action for not removing them, if prejudiced by the delay, *Geaves v. Ashlin*, 3 Campb. 426.

No.
CCCCXCI.
*To complete
Contract.*

the same or I shall immediately after resell the same and commence an action for the recovery of the loss (if any) on such resale and all expenses and damages arising from your breach of contract Dated this day of

Yours &c. A. B.

No.
CCCCXCII.
*Composition
Deed.*

No. CCCCCXCII.

*Notice in the London Gazette of a Composition Deed
having been executed.*

Obs. A conveyance of all a trader's property to trustees for the benefit of creditors is, by the 12 & 13 Vict. c. 106, s. 68, not to be deemed an act of bankruptcy, provided the deed be executed by every such trustee within fifteen days after the execution thereof by the trader, and the same be attested by an attorney or solicitor, and notice of the date and execution of the deed, and of the name and place of abode respectively of every trustee, be advertised in the Gazette and other papers within one month after the execution thereof.

This is to give notice that J. T. of &c. baker hath by indenture bearing date the day of 18 and made between the said J. T. of the one part and A. A. of &c. mealman and B. B. of &c. coal merchant of the other part conveyed and assigned all his real and personal estate and effects to the said A. A. and B. B. their heirs executors administrators and assigns upon trust for the equal benefit of such of the creditors of the said J. T. as shall assent to and execute the said indenture within two months from the date thereof and that the said indenture was duly executed by the said J. T. on the said day of and by the said A. A. on the day of aforesaid and by the said B. B. on the day of aforesaid which execution (a) was witnessed by J. J. of &c. gentleman.

Notices of Dissolution of Copartnership, see ante, pp. 778, 779,
COPARTNERSHIP.

(a) As to the time and mode of executing the deed, see *Obs. above.*

No. CCCCXCIII.

*Notice to deliver up Goods.*No.
CCCCXCIII.*To deliver up
Goods.*

Sir

I hereby give you notice that the goods and chattels being &c. [set forth the articles accurately (a)] are my property and not the property of C. D. or of any other person whatever And I hereby offer to produce to you all documents in my possession or power tending to establish that the said goods and chattels are my property as aforesaid And I hereby require you to deliver the said goods and chattels to E. F. who is fully authorized by me to demand and receive the same from you And if you have any lawful lien or claim (b) upon the said goods and chattels I hereby require you to state the same and I give you notice that I am ready and willing to pay the same And in case you cannot deliver up the goods immediately without inconvenience then and in that case I will attend at the premises on any day you may appoint And in default of your appointing I shall then attend on the day of next between the hours of eleven and twelve o'clock in the forenoon for the purpose of receiving and removing the said goods (c) and chattels but in default of your compliance with the said notice I shall immediately commence an action for the recovery of the same goods and chattels.

(a) If the goods are not properly described, the demand will be deemed insufficient; therefore a demand of fixtures held not to be a demand of furniture or detached goods, *Colegrave v. Dios Santos*, 2 B. & C. 76; see further, 1 Chit. Gen. Pract. 567.

(b) Where the owner of a freehold house, in which were various fixtures, sold it by auction, and nothing was said about the fixtures, held that they passed by the conveyance of the freehold, *Colegrave v. Dios Santos*, *ub. sup.*

(c) If the seller of an estate leaves furniture or other things upon it, he cannot afterwards maintain trover against the buyer or owner thereof for the recovery of them, *Colegrave v. Dios Santos*, *ub. sup.* So, unless a lessee uses during the term his privilege, whatever it may be, of removing fixtures, he cannot afterwards remove them, *Lee v. Risdon*, 7 Taunt. 188. For other notices respecting the demand of property, see 1 Chit. 566, *et seq.*

No.
CCCCXCIV.

*To determine
Lease.*

No. CCCCXCIV.

Notice of determining a Lease.

I do hereby give you notice that in pursuance of the power given and reserved to me by the indenture of lease bearing date &c. and made between &c. comprising the messuage or tenement farm lands hereditaments and premises which I hold as lessee to you situate &c. that it is my mind and intention to avoid the same indenture of lease at the expiration of the first seven years of the term thereby granted which will come and be on &c. and that I shall quit and deliver up the possession of the said messuage and premises to you at that period Dated &c.



No.
CCCCXCV.

*To pay
Mortgage
Money.*

No. CCCCXCV.

Notice of Intention to repay Mortgage Money.

Sir

Please to take notice that I shall at the end of six calendar months from the date hereof being the day of now next ensuing pay unto you your executors administrators or assigns the sum of £ due and owing to you from me on mortgage of certain estates comprised in an indenture of mortgage made by me to you bearing date &c.

Witness my hand

(mortgagor).

To Mr. *(mortgagee) of &c.*



No.
CCCCXCVI.

*To pay
Mortgage
Money.*

No. CCCCCXCVI.

Notice from Trustees to Mortgagor to pay Mortgage Money.

We do hereby give you notice to pay to us on the day of next the principal sum of £ and interest upon and by virtue of a certain indenture of assignment by way of mortgage bearing date on or about the day of made or expressed to be made between *(mortgagor)* of &c. of the first part *(mortgagee)* of &c. of the second part and us trustees of the said *(mortgagee)* of the third part And we do hereby inform you that if default shall be made in the payment of the said principal

sum and interest we shall after the said day of next
ensuing proceed to make sale and disposition of all or some part
of the pieces or parcels of ground messuages or tenements and
erections assigned or demised by the said indenture in pursu-
ance of the power enabling us to make sale or other disposition
thereof *As witness &c.*

To Mr. A. B.

No.
CCCCXCVI.
*To pay
Mortgage
Money.*

No. CCCXC VII.

Another from Mortgagee.

I do hereby give you notice that unless the principal and interest ("and costs" *if any*) due and owing to me (*mortgagee*) by virtue of a certain indenture &c. be paid at the expiration of six months from the date hereof I shall immediately proceed to a sale of the messuages and hereditaments in the said indenture comprised in pursuance of the power thereby vested in me

Signed _____ (mortgagee).

To Mr. (mortgagor) of &c.

No.
CCCCXCVII.
*From
Mortgagee.*

No. CCCXCVIII.

Another to Assignees of a Bankrupt.

To Messrs. A. B. and B. C. assignees of the estate and effects of
E. F. a bankrupt.

I hereby give you and each of you notice to pay to me the undersigned G. H. executor of the last will and testament of A. L. of &c. deceased at the office of Mr. N. N. solicitor on the day of next the principal sum of £ which is now due and owing from you as assignees as aforesaid to me as executor as aforesaid by virtue of certain indentures of lease and release bearing date respectively the and days &c. by way of mortgage together with all interest that shall appear to be due thereon Dated &c. G. H.

No.
CCCCXCVIII.
*To Assignees
(Bankrupt).*

No.
CCCCXCIX.

From
Mortgagee to
Lessee.

No. CCCCXCIX.

Notice to Lessee to pay Rent to Mortgagee.

Obs. Where there is a tenant in possession by a lease prior to the mortgage, the mortgagee may at any time, after default in payment of the mortgage money, give him notice to pay the rent to him, and he may distrain for all the rent which is due at the time of the notice, and also for all that accrues due afterwards, *Moss v. Gallimore*, Dougl. 266.

Sir

Take notice that by an indenture of grant bearing date the day of and made between (*mortgagor*) of &c. your landlord of the one part and me (*mortgagee*) of &c. of the other part the messuage or tenement and premises now in your occupation were conveyed to me my heirs and assigns in mortgage for securing the repayment of the sum of £ and interest and which said sum with an arrear of interest thereon is still due and unpaid I do therefore give you notice not to pay any rent due or hereafter to become due from you for the said messuage or tenement and premises to the said (*mortgagor*) or to any other person or persons on his behalf but to pay the same rent and arrears of rent to me or my attorney or to such other person or persons as I shall authorize to receive the same Dated the day of

Yours &c.

(*mortgagee*).

To Mr.

(*lessee*) of &c.

No. D.

No. D.
From Attorney
to Lessee.

Notice by Attorney of a Mortgagee not to pay Rent to Mortgagor.

Take notice that by indentures of lease and release bearing date &c. the release being made between &c. the messuages &c. now in your occupation situate &c. were amongst other things conveyed and assured to the said A. B. for the better securing the payment of the sum of £ and interest by the said C. D. to the said E. F. at a certain day in the said indenture of release mentioned and now past and which with a considerable arrear of interest thereon is still due and unpaid to the said E. F.

I do therefore as the attorney of the said E. F. give you notice not to pay any rent now due or to become due from you for the said messuage &c. to the said C. D. or to any other person or persons than to the said E. F. or to me as his attorney or to such other person or persons as shall be duly authorized to receive the same.

No. D.

*From Attorney
to Lessee.*

Mr. A. B.

No. DI.

From the Assignee of a Reversionary Interest in Stock to the Trustees, in whose Name the Stock is standing. As to Notice of an Assignment of a Chose in Action, see ante, p. 346, pl. 4.

No. DI.

*From Assignee
to Trustees.*

I hereby give you notice that by an indenture bearing date the day of made between (*assignor*) of &c. of the one part and me the undersigned (*assignee*) of the other part *All* the share right and interest of the said (*assignor*) under and by virtue of the last will and testament of (*testator*) of deceased of and in the sum of £ Three per Cent. Consolidated Annuities now standing in your names in the books of the Governor and Company of the Bank of England and held by you subject to the trusts declared in the said will were assigned by the said (*assignor*) to me my executors administrators and assigns upon the trusts in the said indenture mentioned for securing certain monies advanced by me the said (*assignor*) with interest *As witness* my hand this day of 18

Signed

(*assignee*).

To Messrs.

(*trustees*).

NOTICES TO QUIT.

- | | |
|--|--|
| 1. <i>Where notice is not necessary.</i>
<i>Form of the Notice.</i>
2. <i>Tenancy from Year to Year.</i>
<i>Or from Month to Month, &c.</i> | 3. <i>In case of deserting Premises.</i>
4. <i>Not in Writing.</i>
5. <i>Signature by one Partner.</i> |
|--|--|



Where notice
is not neces-
sary.

Form of the
notice.

Tenancy from
year to year.

Or from month
to month, &c.

In case of de-
serting pre-
mises.

SECT. 1. Where a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term, *Right v. Darby*, 1 T. R. 162; so a demise for twelve months certain, and six months' notice afterwards, may be terminated at the end of the year, by a six months' previous notice, *Thompson v. Maberley*, 2 Campb. 574; but a demise not for one year only, but from year to year enures as a demise for two years at least, *Denn v. Cartwright*, 4 East, 29; and it is not necessary, in a notice to quit, to insert the words "or pay double rent," in order to entitle the landlord, under 4 Geo. 2, c. 28, to recover double rent, *Messenger v. Armstrong*, 1 T. R. 53.

2. In the case of tenancies from year to year, half-a-year's notice to quit is absolutely necessary before an ejectment can be brought, and such notice must expire at the time of the year when the tenancy commences, *Flower v. Darby*, 1 T. R. 159. When parties enter between the usual quarter days, the notice must expire on the day of entry, *Kemp v. Derrett*, 3 Campb. 510. So if parties agree that the tenancy shall be determinable at a quarter's notice, still the notice, in the absence of all agreement to the contrary, must expire when the tenancy expires, *Pitcher v. Donovan*, 1 Taunt. 555; *S. C.* 2 Campb.

78. Where houses or lodgings are let from month to month or week to week, a month's or week's notice must be given, unless it be otherwise stipulated, *Peacock v. Raffan*, 6 Esp. 4; and that must expire on the day of entry, at the end of the month or week, *Kemp v. Derrett*, 3 Campb. 509. When the tenancy cannot be ascertained, and a notice to quit is served personally on the tenant, and he makes no objection to it, this is *primâ facie* evidence that the tenancy commenced at the period when the notice expires, *Clarges v. Forster*, 13 East, 405; *Jones v. Thomas*, 2 Campb. 647; but otherwise if the notice be not personally served, *Ash v. Calvert*, 2 Campb. 387.

3. If any tenant at rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the premises, the 11 Geo. 2, c. 19, s. 16, requires notice to be affixed on the premises by two justices of the peace (see *Form*); except in the Metropolitan

Police District, 3 & 4 Vict. c. 84, s. 13. The 57 Geo. 3, c. 52, extends *Notice to Quit.* this provision to tenants holding under any demise or agreement. See also 1 & 2 Vict. c. 74, for the recovery of the possession of tenements after determination of the tenancy, and forms in the schedule to that act.

4. A notice to quit need not be in writing, *Macartney v. Crick*, Not in writing. 5 Esp. 196; unless it be so expressly agreed between the parties, *Legg v. Benion*, Willes, 43; but it is the safest course for the purpose of evidence.

5. Where joint lessors are partners in trade, a notice to quit signed by one is sufficient, *Elliott v. Hulme*, 2 Mann. & Ryl. 433; but in the case of joint tenants, it must be signed by all, *King v. Woodward*, 3 B. & Ald. 689. A notice to quit signed by three of four trustees, who were joint landlords under a deed of trust, was held sufficient, *Alford v. Vickery*, 1 Car. & M. 280. See 7 M. & W. 139. A notice to quit by an unauthorized agent cannot be made good by an adoption of it by the principal, after the proper time for giving it, *Doe d. Lyster v. Goldwin*, 1 G. & D. 463; 2 Q. B. 143. See Woodfall's L. & T. 280—299, 7th ed.

—◆—

No. DII.

Notice from a Landlord to a Tenant to Quit.

No. DII.

From Landlord.

To Mr. A. B.

I do hereby give you notice to quit and deliver up on the day of next possession of the messuage or dwelling house situate in the parish of in the county of which you now hold under me (a).

Dated &c.

C. D.

—◆—

No. DIII.

Another by an Agent.

No. DIII.

From Agent.

As agent for and on behalf of the Reverend the Dean and Chapter of &c. I do hereby give you notice that the said D. and

(a) If the commencement of the tenancy is uncertain, say, "*Provided your tenancy commenced at that period of the year or otherwise that you quit and deliver possession of the said messuage &c. at the end of the year of your tenancy which shall expire next after half a year from the time of your being served with this notice.*"

No. DIII.

From Agent.

C. do intend to enter upon and take possession of all and singular the lands hereditaments matters and things of every description which you now hold as tenant under the said D. and C. within the parish &c. and you are therefore required to quit and deliver up possession of the same at the end of this present current year for which you now hold the same Given under my hand this &c.

To Mr. A. B.

No. DIV.

No. DIV.

*To Quit or pay
Double Rent.*

Another to Quit or pay Double Rent.

I do hereby give you notice and require you to quit and deliver up on the day of next ensuing the date hereof the possession of the messuage lands and hereditaments with the appurtenances which you now hold of me situate at in the county of And in default thereof I do hereby give you notice that I shall require you to pay to me (a) double the yearly value thereof from the said day of for so long time as you shall continue to keep possession of the said premises after the expiration of the said notice according to the form of the statute in that case made and provided Dated &c.

Signed by (landlord).

To Mr. (tenant).

No. DV.

No. DV.

From Tenant.

Notice from Tenant to Landlord of Intention to Quit.

I do hereby give you notice that I shall quit and deliver up to you [if an agent, "as agent of G. H. my landlord"] or such other person as you may appoint to receive the same on the day of which will be in the year of our Lord 18 being the end of my present year's holding the possession of all that messuage or dwelling house garden and hereditaments with the appurtenances situate in or elsewhere in the county of Witness my hand this &c.

A. B.

To Mr. C. D.

(a) These words are not necessary to entitle the landlord to recover, see Obs. 1.

No. DVI.

No. DVI.

*Notice affixed to Premises on being deserted by the Tenant.**On deserted
Premises.**Obs.* As to this notice, see NOTICES TO QUIT, Pref. sect. 3.

To Mr. A. B.

Take notice that upon the complaint of C. D. of &c. made unto us (*justices*) esquires two of her Majesty's justices of the peace for the said county that you the said A. B. have deserted the messuage and tenement called consisting of situate lying and being at aforesaid in the county aforesaid unto you demised at rack rent by the said C. D. and that there is in arrear and due from you the said A. B. unto the said C. D. one year's rent for the said demised premises and that you having left the said premises uncultivated and unoccupied so that no sufficient distress can be had to countervail the said arrears of rent We the said justices (having no interest nor either of us having any interest in the said demised premises) on the said complaint as aforesaid and at the request of the said C. D. have this day come upon and viewed the said demised premises and do find the said complaint to be true and on the day of this present month of we shall return to take a second view thereof and if upon such second view you or some person on your behalf shall not appear and pay the said rent in arrear or there shall not be sufficient distress on the said premises then we the said justices will put the said C. D. into the possession of the said demised premises according to the form of the statute in such case made and provided *In witness* whereof we have hereunto set our hands and seals and have caused this notice to be affixed on the outer door of the dwelling house the same being the most notorious part of the said premises this day of in the year of the reign of our sovereign lady Victoria of the United Kingdom of Great Britain and Ireland Queen.

No. DVII.

*From Landlord
to repair
Premises.*

No. DVII.

Notice from Landlord to repair Premises.

Mr. A. B.

I do hereby give you notice and require you to put in good and tenantable repair all and singular the house and premises which you now rent of or hold under me situate &c. particularly [*stating such places as particularly want repairing*] As witness my hand this day of 18



No. DVIII.

*To refer
Disputes.*

No. DVIII.

Notice from one Partner to another for referring Disputes to Arbitration.

Obs. As to the form of this notice, see COPARTNERSHIP, Pref. sect. 15, *ante*, p. 680.

Sir

I hereby give you notice that it is my intention and desire that the differences now subsisting between us respecting &c. [*state subjects of difference*] should be settled in conformity to the clause or permission for that purpose contained in the deed or articles of co-partnership between us And in pursuance thereof I do hereby nominate and appoint A. B. &c. my arbitrator concerning the premises And I hereby give you further notice that in default of your naming an arbitrator therein on your behalf by the space of fourteen days next after the date hereof I shall at the expiration thereof submit the subjects of dispute to the arbitration of two indifferent persons to be by me named (the said A. B. being one of them) for their determining the same in pursuance of the authority given to me for that purpose in and by the said articles of copartnership.



No. DIX.

*To prevent
Sporting.*

No. DIX.

Notice to prevent Sporting.

Mr. A. B.

We whose names are hereto severally and respectively subscribed do hereby give you notice that henceforth you do not at

any time enter or come upon any part of the farms lands woods hereditaments and premises in our several and respective possessions or occupations situate &c. or any or either of them or elsewhere in the kingdom of Great Britain either for the purpose of coursing hunting shooting fishing or fowling or on any pretence whatsoever as we shall deem every such entry and intrusion as wilful trespasses done to us respectively and shall take our remedy for the same according to law Dated this &c.

No. DIX.
*To prevent
Sporting.*

No. DX.

Notice to produce Title Deeds.

I hereby give you notice to produce to Mr. (attorney) of &c. solicitor on the day of next on his application at your residence at &c. all the deeds and writings mentioned or referred to in an indenture dated the day of 18 by which the same were covenanted to be produced by you to me my heirs or assigns [the said (attorney) being the solicitor of (purchaser) of &c. with whom I have contracted to sell part of the hereditaments and premises purchased by me of you] and I hereby undertake to pay you the reasonable costs and charges which may attend the production of the said deeds and papers on your informing me of the amount thereof *As witness my* hand this day of

No. DX.
*To produce
Title Deeds.*

(Covenantee).

To Mr. (covenantor).

PARTITION.

1. *Definition.**How Partition may be made.*2. *Deeds of Partition.*3. *Partition of Freeholds.**By Assignment of Terms for Years.*4. *Parties to a Partition.**Under the Inclosure Acts.*5. *Partition of Copyholds.**Courts of Equity may decree partition of Copyholds.*6. *Stamp duty.*

Definition.

SECT. 1. Partition is the division of lands or tenements by coparceners, joint tenants, and tenants in common. It is made either by the agreement of the parties, or it is compulsory; that is, either by writ *de partitione faciendâ* at law, or by bill in equity. (As to the mode of proceeding, to effect partition under a commission issuing out of Chancery, see Allnat on Partition, 77, 209; 2 Dan. Ch. Pr.) See AGREEMENTS for a PARTITION, *ante*, pp. 127, 128 and Nos. LXXIII. – LXXV. When partition is made pursuant to the writ, and final judgment is given, the partition is complete, as to coparceners, without any conveyance; but, as to joint tenants and tenants in common, it is for the most part necessary that mutual conveyances should be executed. Where partition is made by bill, it is perfected by conveying the allotments made to the several parties, and if they be not competent to execute the conveyances, the partition cannot be perfected, *Whaly v. Dawson*, 2 Sch. & Lef. 367. The committee of a lunatic may be ordered under the Trustee Act, 1850, and the Lunacy Regulation Act, 16 & 17 Vict. c. 70, s. 124, to convey a share of the lunatic's estate for effecting a partition in a suit, *Re Bloomar*, 2 De G. & J. 88; 27 Law J., Ch. 173. See *Cole v. Sewell*, 17 Sim. 40; *Stanley v. Wrigley*, 3 Sm. & G. 18. It is usually left to the master to determine who shall be parties to the conveyance. Commissioners have no power to award sums to be paid for owelty of partition, *Mole v. Mansfield*, 15 Sim. 41. Where an undivided share of an estate is the subject of a settlement, or is devised in strict settlement, an express power authorizing a partition is often inserted, or the power is sometimes incorporated with the power of sale and exchange. A power to sell and exchange merely does not so clearly authorize a partition that the court will force on a purchaser a title taken under it. But where a power was to make sale and *dispose of*, or convey in exchange, and the power to revoke and limit new uses for carrying these powers into effect, also referred to *disposition* and the declaration as to the application of the money to be obtained, referred also in terms to *partition*, it was held that on the whole there was a good title to

How partition may be made.

partition, and the title taken under it was a good title, *Bradshaw v. Fane*, 3 Drew. 534. See 2 Sugd. on Powers, 479—482, 7th ed. Partition.

2. Formerly, deeds of partition consisted of the division and allotment of the shares, with some few covenants; and in respect to coparceners this may be sufficient; but in modern practice it is usual to effect partition by mutual conveyances. Deeds of partition.

3. To effect a partition of freehold lands, it is usual, either for all the tenants to join in conveying the entirety of the estate to a trustee, limiting the several particular parts allotted to each to his use, or to convey each particular part by a separate deed to a trustee to the use of the respective parties. Terms for years may be conveyed by joint tenants and tenants in common by assigning the entirety to a trustee, and taking from him a reassignment of each respective share. The reassignment by the trustee is usually made by way of indorsement on the original deed of assignment. Partition of freeholds.

4. The husbands of coparceners seised in fee simple in right of their wives may make an equal partition, but the wives must be parties, or the partition will not be binding on them, Co. Litt. 170. If the partition be unequal, it will be voidable by the wife on the death of either, 4 Co. 726; Dy. 67, a. So a partition of lands entailed between parceners, if it be equal at the time of the partition, shall bind the issue in tail, Co. Litt. 173. A coparcener and her husband may grant a rent in fee for equality of partition, Co. Litt. 169; but it is otherwise with joint tenants, *Marsh and Smith's case*, 1 Leon. 27. By the Inclosure Act, 41 Geo. 3, c. 109, commissioners are authorized at the request of the parties to make partition of the allotments to the owners or proprietors who should be entitled to the same as coparceners, joint tenants, and tenants in common, when, by reason of infancy, coverture, or any other disability, they could not make any effectual division thereof. The act 8 & 9 Vict. c. 118, s. 90, contains a similar provision, but the jurisdiction was confined to lands subject to be inclosed under the authority of that act. By 11 & 12 Vict. c. 99, s. 13, the powers of the inclosure commissioners are extended, and on the application of the parties interested, an order of partition may be framed and confirmed by the inclosure commissioners, although the lands are not subject to be inclosed. See also 15 & 16 Vict. c. 79, ss. 31, 32; 17 & 18 Vict. c. 97, s. 5. Parties to a partition.

5. The statutes, 31 Hen. 8, c. 1; 32 Hen. 8, c. 32; 8 & 9 Will. 3, c. 31, for enforcing partition did not extend to copyholds, *Burrell v. Dodd*, 3 B. & P. 378; the partition of which, whether by consent of the lord or in pursuance of a decree in equity, must be made by surrender, Co. Cop. 5, 54; Gilb. Ten. 185; *Oakeley v. Smith*, Ambl. 368; Allnat on Partition, 135; except as far as relates to tenants in tail having equitable estates. After the 21st June, 1841, any court of equity in any suit to be thereafter instituted therein for Under the Inclosure Acts.

Partition of copyholds.

Courts of equity may

Partition.
decree a parti-
tion of copy-
holds.

the partition of lands of copyhold or customary tenure, may make the like decree for ascertaining the rights of the respective parties to the suit in such lands and for the issue of a commission for the partition of the same lands and the allotment in severalty of the respective shares therein as according to the practice of such courts might then be made with respect to lands of freehold tenure, 4 & 5 Vict. c. 35, s. 85. As to proceedings in decrees for a partition, see 2 Dan. Ch. Pr. Ch. XXV. s. 4. Before this act a bill in equity did not lie for the partition of copyholds or customary freeholds, *Horncastle v. Charlesworth*, 11 Sim. 315; *Joze v. Morshead*, 6 Beav. 213. Where freeholds and copyholds were held together in common, the objection was obviated by the court directing the entire copyholds to be given to one party, and the freehold or part of the freehold to another, *Dillon v. Coppin*, 6 Beav. 217, n.; Co. Litt. 167 b; *Burrell v. Dodd*, 3 Bos. & P. 378; 1 Scriv. Cop. 87, 543, 4th ed.; *Bolton v. Ward*, 14 L. J., Ch. 361, *ante*, pp. 27, 28.

Stamp duty.

6. A common deed stamp of 1*l.* 15*s.*, where the sum paid for equality of partition is under 300*l.*; but where it exceeds that sum, then an *ad valorem* stamp on the amount paid as in other conveyances; if the deed contains 2160 words and upwards a further progressive duty of 10*s.* for every 1080 words above the first 1080, 55 Geo. 3, c. 184, Sched. Duplicates to be charged with a stamp duty of 5*s.*, and a progressive duty of 2*s.* 6*d.* for every 1080 words above the first 1080 words. See *ante*, p. 888. A deed of partition stated on its face only a nominal consideration for the conveyance of land in severalty to one of the co-tenants, and was stamped accordingly. In fact he agreed to pay 600*l.* for equality of partition, and had given a bond to secure that sum, it was held that neither the deed nor the bond was void by reason of the improper stamp, *Henniker v. Henniker*, 1 Ell. & Bl. 54; 22 Law J., Q. B. 94. On the subject of partition generally, see 6 Jarm. Conv. by Sweet, pp. 586—670.



No. DXI.

No. DXI.

*Freeholds and
Copyholds.*

Deed of Partition of Freehold and Copyhold Estates. (General Precedent, with Variations where there is a Declaration to bar Dower.)

Recital of
seisin in joint
tenancy.

This Indenture made &c. Between A. B. of &c. of the first part C. B. of &c. of the second part and (trustee) of &c. of the third part Whereas the said A. B. and C. B. are seised of the freehold lands and hereditaments described in the first and second schedules hereunder written and intended to be granted or otherwise assured as tenants in common in fee simple in pos-

session *And whereas* the said A. B. and C. B. are also seised of the copyhold lands and hereditaments described in the said schedules as tenants in common in fee simple in possession according to the custom of the manor of in the county of whereof the same lands and hereditaments are holden *And whereas* the said A. B. and C. B. have agreed that partition should be made between them of the said lands and hereditaments by two indifferent persons one of them to be chosen by the said A. B. and the other by the said C. B. and in case they could not agree then by such one person as the two said referees should for that purpose appoint *And whereas* the said arbitrators have awarded and adjudged all lands and hereditaments marked in the map or plan hereunto annexed to be the specific part or share of the said A. B. he paying unto the said C. B. the sum of £ for equality of partition *And* all those marked on the same map together with all timber and other trees to be the specific part or share of the said C. B. saving and reserving nevertheless unto and for the said A. B. a right of road or way as the same was then used and exercised for horses carts carriages and otherwise along the north and east sides of the said grounds *And whereas* the said specific allotments have been divided and fenced and the said A. B. and C. B. are desirous of completing the partition of the said lands and hereditaments *And whereas* on or before the day of the date of these presents the said sum of £ has been duly paid by the said A. B. unto the said C. B. *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the premises They the said A. B. and C. B. *Do* and each of them *Doth* hereby grant and convey unto the said (T.) and his heirs and assigns *All those* &c. And all houses &c. And all the estate &c. of them the said A. B. and C. B. and each of them of in to and out of the said lands and hereditaments hereby granted or intended so to be and every of them and every part and parcel thereof with their and every of their appurtenances *To have and to hold* the said lands &c. and all and singular other the premises hereby granted or intended so to be unto the said (T.) and his heirs nevertheless to the uses and upon the trusts herein after expressed and declared of and concerning the same respectively (that is to say) *As to for and concerning all* such and so many and such freehold part and parts of the same lands hereditaments and premises as are mentioned and described in the first schedule hereunder written or hereunto annexed *And also*

No. DXI.

Freeholds and Copyholds.

Contract for partition by arbitrators.

Arbitration.

Of allotments, &c.

Testatum.

Habendum.

No. DXI.

*Freeholds and
Copyholds.*— As to certain
parts to such
uses as A. B.
shall appoint.Further tes-
tatum.Covenant from
C. B. to sur-
render.

the said right of road or way as the same is now used and exercised for horses carts &c. along the east and north sides of the said lands &c. *To such uses* upon such trusts and for such intents and purposes as the said A. B. by any deed or deeds instrument or instruments in writing to be by him duly sealed and delivered shall direct and appoint And in default of and until such direction or appointment (a) *To the use* of the said A. B. his heirs and assigns to be held in severalty in lieu of the undivided part or share of the said A. B. in the said lands hereby granted or intended so to be *And as to for and concerning all* such other part or parts of the said lands hereditaments and premises as are mentioned and described in the second schedule hereunder written &c. *To the use* of the said C. B. his heirs and assigns to be held &c. *And this Indenture further witnesseth* That for the purpose of carrying the said agreement into full effect and in consideration of the covenant hereinafter contained on the part of the said A. B. He the said C. B. for himself his heirs executors and administrators Doth hereby covenant with the said A. B. his heirs and assigns That he the said C. B. his heirs or assigns shall or will at or before the next customary court to be holden for the said manor or as soon after as conveniently may be well and effectually surrender into the hands of the lord or lady of the said manor one moiety or equal half part or share of and in all such part or parts of the lands and hereditaments mentioned and specified in the first schedule hereunder written as are holden of the said manor by copy of court roll with their rights and appurtenances And the reversion &c. and all the estate &c. of him the said C. B. of in to and out of the said lands &c. to the use of the said A. B. his heirs and assigns *To the intent* that the said A. B. or his heirs may immediately thereon be admitted tenant thereto to hold the same copyhold lands and hereditaments so mentioned and specified in the said first schedule hereunder written in severalty to the

(a) If there is to be a declaration to bar dower say, "*To the use* of the said A. B. and his assigns for and during the term of his natural life and after the determination of that estate by any means then to the use of the said (T.) and his heirs during the natural life of the said A. B. in trust for him and his assigns and to the intent that no wife of the said A. B. may be entitled to dower in or out of the said hereinbefore last mentioned premises and after the determination of the estate hereinbefore limited to the said (T.) then to the use of the said A. B. his heirs and assigns to be held &c." (*as above.*)

said A. B. and his heirs for ever at the will of the lord according to the custom of the said manor and by and under the rents suits and services therefore due and of right accustomed And that in the meantime and until such surrender shall be made as aforesaid and the said A. B. his heirs or assigns shall procure admittance by virtue thereof he the said C. B. his heirs and assigns shall stand seised and possessed of all the same moiety *In trust* for the said A. B. his heirs and assigns *And also* that the said A. B. his heirs or assigns shall and will pay the fine and other expenses of his or their admission to the said copyhold premises *And this Indenture further witnesseth* That in consideration of the premises He the said A. B. for himself his heirs and assigns Doth hereby covenant &c. with &c. the said C. B. his heirs and assigns That he the said A. B. his heirs and assigns shall surrender &c. all &c. the copyhold lands &c. mentioned &c. in the second schedule &c. And the reversion &c. And all the estate &c. of him the said A. B. of &c. And in the meantime stand seised for C. B. &c. *And* each of them the said A. B. and C. B. so far as relates to his own acts deeds and defaults and so far as relates to his respective undivided moiety of and in the said freehold and copyhold hereditaments and premises and not further or otherwise *Doth* hereby for himself and his respective heirs executors and administrators covenant with the said (T.) his heirs and assigns in manner following (that is to say) That for and notwithstanding any act deed matter or thing whatsoever by the said A. B. and C. B. or either of them or by their late father A. B. deceased done committed or willingly or knowingly suffered they the said A. B. and C. B. are now seised of the said freehold and copyhold lands hereditaments and premises hereby granted conveyed covenanted to be surrendered or otherwise assured or intended so to be in equal shares and proportions of and for a good sure absolute and indefeasible estate of inheritance in fee simple *And* that they now have in themselves good right full power and absolute authority to grant convey surrender or otherwise assure the said freehold and copyhold lands hereditaments and premises hereby granted and covenanted to be surrendered respectively and every part thereof to and upon the uses and trusts hereinbefore declared and contained of and concerning the same *And* that the same freehold and copyhold lands shall and may be held and enjoyed accordingly without any let suit trouble denial interruption eviction or ejectment whatsoever of from or by the

No. DXI.

*Freeholds and
Copyholds.* —Further tes-
tatum.Covenant from
A. B.Covenants for
title.Rightfully
seised.Good right to
convey.Quiet enjoy-
ment.

No. DXI.

Freeholds and
Copyholds.Free from in-
cumbrances.Further as-
surance.

said A. B. and C. B. or either of them their or either of their heirs or any other person or persons whomsoever lawfully or equitably claiming or to claim by from through under or in trust for them or either or any of them or by from through or under the said A. B. their late father And that free and clear and freely clearly and absolutely acquitted exonerated released and discharged or otherwise by the said A. B. and C. B. their heirs executors or administrators well and sufficiently saved harmless and kept indemnified of from and against all and all manner of former and other grants conveyances assurances and incumbrances at any times heretofore or to be at any times hereafter made done committed occasioned or permitted by them the said A. B. and C. B. or either of them or by any person or persons rightfully claiming or to claim by from under through or in trust for them or either of them or by the said A. B. their late father or any person &c. rightfully claiming &c. by &c. or through him And moreover that they the said A. B. and C. B. and each of them and their and each of their heirs and all persons whomsoever lawfully or equitably claiming &c. by &c. them or either of them or by &c. the said A. B. their late father any estate &c. of in to or out of the said freehold and copyhold lands hereditaments and premises shall at all times hereafter make do acknowledge and execute all acts deeds conveyances and assurances for the better granting conveying and surrendering the same lands &c. and every of them and every part thereof to the uses hereinbefore expressed and declared of and concerning the same [Where the deeds are delivered to one of the parties, there should be a covenant for the production of the deeds. See *Deed of Partition between Tenants in Common in Tail*, Shelford's Real Prop. Stat., App. pp. xxix.—xlvi., 6th ed., and other Forms in 4 Martin's Conv. by Davidson, pp. 210—259.]

In witness &c.

The first schedule to which the above written indenture refers. The second schedule, &c. [*as above.*]



No. DXII.

Covenants in Deed of Partition where the several Shares were limited to various Uses.

No. DXII.

Covenants.

And the said A. (as respects only the acts deeds and defaults of himself and all persons claiming or to claim through or under him) doth hereby for himself his heirs executors and administrators And the said B. (as respects only the acts deeds and defaults of himself and the said Ann his wife and each of them and of all persons claiming or to claim through or under them or either of them) doth hereby for himself his heirs executors and administrators And the said C. (as respects only the acts deeds and defaults of herself and of all persons claiming or to claim through or under her) doth hereby for herself her heirs executors and administrators covenant and declare with and to the said (*grantee*) his heirs and assigns in manner following (that is to say) That notwithstanding any act deed matter or thing whatsoever done committed permitted or privily suffered by the said several persons parties hereto of the first second and third parts respectively or any of them They the said A. B. and Ann his wife and C. or some or one of them now have or hath in themselves himself or herself good right and absolute authority by these presents to convey and assure the said manors messuages farms lands and hereditaments hereby conveyed and assured or intended so to be and every part thereof with the appurtenances unto the said (*grantee*) and his heirs for ever To the uses hereinbefore limited concerning the same in manner aforesaid and according to the true intent and meaning of these presents And also that the same manors messuages farms lands and hereditaments and every of them shall henceforth remain and be To the several uses upon and for the trusts intents and purposes and with under and subject to the powers declarations and provisions hereinbefore limited and declared thereof and the rents issues and profits thereof be received and enjoyed accordingly without any lawful eviction interruption claim or demand from or by the said several persons parties hereto of the first second and third parts respectively or any of them their or any of their heirs or any person or persons rightfully claiming or to claim through under or in trust for them or any of them And that free and clear and freely and clearly exonerated and discharged or otherwise by the said several

Each party covenants in respect of his own acts and the acts of his own wife.

Good right to convey.

For quiet enjoyment.

Free from incumbrances.

No. DXII.

*Covenants.*For further as-
surances.

persons parties hereto of the first second and third parts respectively their respective heirs executors or administrators effectually indemnified from and against all and all manner of estates rights titles liens charges and incumbrances claims and demands at any time heretofore and to be at any time hereafter made occasioned permitted or privily suffered by them the said several persons parties hereto of the first second and third parts respectively or their respective heirs or any person or persons rightfully claiming or to claim through under or in trust for them or any of them or by their or any of their acts defaults privity or procurement *And also* that they the said several persons parties hereto of the first second and third parts respectively and their respective heirs and every person whosoever rightfully claiming or to claim through under or in trust for them or any of them shall and will at all times hereafter on the request of the person or persons or of any of the persons for the time being seised interested or entitled under the uses hereinbefore limited and at the expense of the party or parties requiring such further assurances as hereinafter mentioned make do or procure to acknowledge and execute or procure to be made done acknowledged and executed all such further and other reasonable acts deeds and assurances whatsoever for the further and more perfectly and satisfactorily confirming or otherwise assuring unto the said (*grantee*) and his heirs the several manors messuages farms lands and other the hereditaments hereby conveyed and assured or intended so to be and every part thereof with the appurtenances to the uses and in manner aforesaid and according to the true intent and meaning of these presents and generally for establishing corroborating and confirming these presents and the uses trusts powers declarations and provisions hereby limited declared and expressed as by the party or parties or any of the parties for the time being seised interested or entitled of in or to the hereditaments hereby conveyed and assured or any part thereof or of any charge or interest thereupon or therein or by his her or their counsel in the law shall reasonably be advised and required *In witness &c.*



No. DXIII.

Power to partition where an undivided Share of an Estate is settled.

No. DXIII.

Power.

Provided always and it is hereby further agreed and declared Power.
between and by the parties to these presents That it shall and may be lawful for the said (*trustees*) and the survivor of them and the executors and administrators of such survivor their or his assigns at any time or times hereafter at the request and by the direction in writing of the said (*tenant for life*) during his life and after his decease at the request and by the direction of the person or persons who for the time being shall by virtue of any of the limitations hereinbefore contained be entitled as tenants for life or in tail by purchase to the actual possession of or to the rents issues and profits of the said manor and other hereditaments hereby granted or intended so to be if such person or persons respectively shall be of full age but if not at the request and by the direction of his her or their guardian or guardians such request and direction to be testified by some deed or writing deeds or writings under the hand and seal or respective hands and seals of the person and persons whose request and direction for the time being is hereby made necessary to join and concur with the person and persons for the time being seised of or entitled to the other parts or shares of the said manors and hereditaments respectively one undivided part or share of which said last mentioned premises is hereinbefore granted or intended so to be in making a partition or division of the same manors and other hereditaments or any part thereof And that for the purpose of effecting any such partition or division as aforesaid it shall and may be lawful for the said (*trustees*) and the survivor of them and executors or administrators of such survivor their or his assigns at such request and by such direction and so testified as last aforesaid by any deed or deeds sealed and delivered by them or him in the presence of and attested by two or more creditable witnesses absolutely to revoke determine or make void all or any of the uses trusts intents powers or provisions hereinbefore limited declared and expressed of and concerning the hereditaments and premises of which such partition or division shall be so made as aforesaid and by the same or any other deed or deeds to limit declare and appoint any uses estates or trusts of the hereditaments the uses of which shall

No. DXIII.

Power.

be so revoked and which it shall be thought necessary or expedient to limit declare or appoint in order to effectuate any such partition or division as aforesaid *And also* that upon any such division or partition as aforesaid the said (*trustees*) and the survivor of them and the executors or administrators of such survivor their or his assigns shall settle and assure or cause to be settled and assured the hereditaments which shall be received in lieu of or as a specific allotment for any part of the hereditaments hereby made partible to such and the same uses upon and for such and the same trusts intents and purposes and with under and subject to such and the same powers conditions and agreements as are in and by these presents limited expressed declared and contained of and concerning such of the hereditaments hereinbefore mentioned as are made partible or as near thereto as the deaths of parties and other intervening accidents will admit of *And it is also* hereby agreed and declared between and by the parties to these presents that upon such partition or division as aforesaid it shall and may be lawful for the said (*trustees*) and the survivor of them and the executors and administrators of such survivor their or his assigns to give or receive any sum or sums of money by way of equality of partition and if the case shall so require to raise the money to be paid for equality of partition by a charge upon all or any of the hereditaments and premises for the time being subject to the then subsisting limitations of these presents and either including or not including the hereditaments so to be received by way of partition and for that purpose by any deed or deeds to limit or appoint the hereditaments and premises so to be charged with the appurtenances to any person or persons by way of mortgage for securing the repayment of the money so to be raised with interest for the same *And also* that upon payment of the money to be received or raised for equality of partition it shall be lawful for the said (*trustees*) and the survivor of them and the executors or administrators of such survivor their or his assigns to give and sign receipts for the money to be paid or raised for equality of partition as aforesaid *And* that such receipt or receipts shall be a sufficient discharge and sufficient discharges to the person or persons paying such sum or sums of money as aforesaid for equality of partition as aforesaid for the money for which such receipt or receipts shall be so given or for so much thereof as in such receipt or receipts shall be acknowledged to be received *And* that the person

or persons paying such sum or sums of money and taking such receipts for the same as aforesaid shall not afterwards be answerable for or concerned to see to the application of the money in such receipt or receipts acknowledged to be received or any part thereof. And it is hereby also agreed and declared between and by the said parties that the said (*trustees*) and the survivor of them and the executors and administrators of such survivor their or his assigns shall pay and apply the money to be received for equality of partition as hereinbefore is mentioned upon the trusts and for the intents and purposes hereinafter expressed and declared of or concerning the same.

No. DXIII.

Power.

POWERS.

SECT. 1. A power, generally speaking, is an authority which one man gives another to act for him, as to receive debts and dividends, to distrain, &c.; or the powers reserved to trustees to sell, make leases, and the like. This kind of powers, when not coupled with any interest, is denominated a dry or naked power, and seems to be the only kind which was originally known at common law. But there is another kind of powers now in common use, which has been defined to be a right reserved by a person to himself, or given by him to another, to divest land from those on whom it was settled by the instrument containing the power, and to vest it in others, as powers of revocation and appointment to new uses, Co. Litt. 342 b, Butl. note [n. 1]. These are said to derive all their effects from the Statute of Uses. Since that statute a man may, in a conveyance to uses, direct or model the use as he pleases, and the statute executes the use; he may, therefore, annex powers to an estate, which cannot be done in a common law conveyance. Powers are, for the most part, inserted in deeds, except powers of attorney which are frequently given by a separate deed, and otherwise called letters of attorney.

POWERS OF ATTORNEY.

2. A power, or letter of attorney, is a writing authorizing an attorney to do any lawful act in the stead of another, as to give seisin of lands, recover debts, or sue a third person, &c. which may be either general or special. In every case the authority must be strictly pursued, Plowd. 475; Co. Litt. 52; 1 Salk. 96. A power to receive and recover all monies, to compound, discharge and give releases, does not authorize the negotiation or indorsement of bills, *Hogg v. Snaith*,

Powers.

1 Taunt. 347; *Hay v. Goldsmid*, 2 Smith Rep. 79. The authority given by letter of attorney must be executed during the life of the person that gives it, Perk. sect. 118; Co. Litt. 52; 2 Roll. Abr. 9. Under a power of attorney by the owner of stock in the public funds, the transfer was not made till three days after the death of the grantor, the power, according to the usual form of the Bank of England powers of attorney, containing a clause to make it valid, notwithstanding the death of the grantor before the transfer was made. The legal interest in the stock was held to be validly transferred; and there being clear evidence that the object of the transfer was to give the beneficial interest, it was held that there was no resulting trust in favor of the next of kin or representatives of the grantor, *Kiddill v. Farnell*, 3 Sm. & G. 428; 3 Jur., N. S. 786; 26 Law J., Ch. 818. Powers of attorney may either be given in deeds, as in assignments, see *ante*, pp. 382, 404, &c., or by separate deed, as in the subsequent precedents. A letter of attorney which is part of a security for money is not revocable, *Walsh v. Whitcomb*, 2 Esp. 565; *Gaussen v. Morton*, 10 B. & C. 731; *Abbott v. Stratten*, 3 Jones & L. 613; *Smart v. Sanders*, 5 C. B. 916; *Bromley v. Holland*, 7 Ves. 3, 28. As to the delegation of such a power, see *ante*, APPOINTMENTS, Pref. sect. 9—13, pp. 234, 235.

A power of attorney by husband and wife severally and respectively appointing an attorney to surrender the wife's customary tenement into the lord's hands is a nullity. At all events the death of the wife is a revocation of such power, and a surrender subsequently made by the attorney is inoperative, *Graham v. Jackson*, 6 Q. B. 811; 9 Jur. 275; 14 Law J., Q. B. 129; *Heath v. Brindley*, 2 Ad. & Ell. 365.

Stamp.

3. A letter of attorney by soldiers and sailors for receiving prize-money is chargeable with a duty of 1s. and for receiving wages 1l.; a letter of attorney for receiving dividends and transferring government or parliamentary stocks is liable to a stamp of 1l. except where the value of the yearly dividends is under 3l., when no stamp is requisite; and every other letter of attorney is charged with a stamp of 1l. 10s., and if it contains 2160 words, 55 Geo. 3, c. 184, sched., together with a further progressive duty of 10s. for every entire quantity of 1080 words above the first 1080 words, *ante*, p. 887. A written authority in the following terms, "I authorize you to indorse my name to three several bills of exchange now in your possession" (describing them), was held to be a letter of attorney requiring a 1l. 10s. stamp, *Walker v. Remmett*, 2 C. B. 850.

No. DXIV.

General Power of Attorney for the Management of the Appointor's Affairs during his Absence abroad.

DXIV.
General.

Obs. As to the stamp, see Pref. sect. 3.

Know all Men to whom these Presents shall come That I A. B. of &c. being about to go into parts beyond the sea *Do* by these presents make ordain constitute and appoint C. D. of &c. my true and lawful attorney for me and in my name to enter into view and survey at his free will and pleasure all and singular my messuages farms tenements and hereditaments whatsoever and wheresoever situate and to view and survey the state and condition of the same to give notices for repairs to the tenants thereof to set let manage and improve the estates to the best advantage to fell and cut down timber and other trees on any of the said lands and hereditaments And the same to sell and dispose of as he shall see necessary (to take down and rebuild all or any houses edifices or buildings as occasion shall require) And do every other act or thing for the improvement of the same which he shall think fit *Also* to pay all taxes rates charges and expenses and make all other payments whatsoever which shall be payable or grow due for or on account of the manors messuages lands hereditaments and other premises of me the said A. B. *And also* to sign and give notices to quit to the tenants of the said estates and to contract with any person or persons for leasing any of the said premises to set fines for new leases and for that purpose for me and in my name and as my act and deed to make seal deliver and execute any leases demises grants or other lawful deeds or instruments whatsoever which shall be necessary in that behalf *And also* to make sale or convey in exchange any of my freehold copyhold and leasehold estates and the money arising from such sale or on account of such exchange to lay out or invest in other lands and hereditaments or on government or real securities or otherwise as he shall think fit and to sign seal and execute any deeds conveyances or assurances for conveying either by absolute sale or in exchange for other freehold copyhold or leasehold estates of me the said A. B. which may be so sold or exchanged and to sign receipts for the consideration money on such sales or exchanges and also to transpose or transfer any mortgages or other securities which he the said C. D. may take for any monies which from

Appointment.

To enter and
view lands.

To pay taxes,
&c.

To renew lease,
&c.

To sell or ex-
change lands,
&c.

No. DXIV.

*General.*To account
with bailiffs,
&c.

time to time may have arisen from such sales or exchanges and may have been placed out on such securities *And also* for me and in my name to ask receive and recover of all the stewards bailiffs receivers farmers tenants and all other occupiers whatsoever of all and every my said manors lands and hereditaments all rents arrears of rent services issues emoluments sum and sums of money due owing and payable or at any time hereafter to grow and become due owing and payable for and in respect or on account of the same premises in any manner whatsoever and an account and accounts of them and all other my stewards bailiffs and accountants whatsoever or any of them to require and take and the said bailiffs receivers servants or agents to displace and remove and put new stewards &c. in their place as the said C. D.

To sue for and
recover debts,
&c.

shall think fit *And also* to sue for receive and recover all manner of debts duties rents services amerciements and sums of money whatsoever due or to grow due to me the said A. B. in respect of the premises aforesaid and on nonpayment thereof or of any part thereof to enter and distrain and the distress and distresses then and there found to detain and keep or otherwise to sell and dispose of the same according to law *And also* to commence and prosecute any actions or suits in any court of law or equity for the recovery of any debt matter or thing whatsoever due or payable or to become due or payable or coming unto or anywise appertaining to me on any account whatsoever and the same actions or suits to prosecute and follow or to discontinue or become nonsuit therein if the said C. D. shall see cause *And also* for me and in my name generally to use and take all lawful ways and means for the recovering receiving obtaining and getting in any rent and sum or sums of money or other things whatsoever which is are shall or may be or by the said C. D. shall be thought to be due owing belonging or payable unto me by any person or persons whomsoever as fully and effectually to all intents and purposes as I the said A. B. might or could do use or take if I were present in person *And also* upon payment receipt or recovery of all and every the aforesaid rents and arrears of rent profits produce debts dues and sums of money for me and in my name to give proper acquittances and discharges for the same respectively

To give acquit-
tances.To present to
benefice.

And also for me and in my name to present a fit person or persons to any church or churches or ecclesiastical benefice or benefices to the right or presentation whereof I the said A. B. am or shall or may be entitled and generally for me the said A. B. and in my name to do execute and perform all and every other

act and acts thing and things needful and expedient in and about the premises as fully and effectually to all intents and purposes as if I were personally present I the said A. B. hereby ratifying and confirming and agreeing to ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done in and about the premises aforesaid And for the better doing performing and executing of all or any the matters and things aforesaid I the said A. B. do hereby further give and grant unto the said C. D. full power and authority to constitute and appoint and in his place and stead to put one or more attorney or attornies for me and as my attorney or attornies and the same again at his pleasure to revoke and other or others in his or their place or places to substitute *And whereas* it is my intention in case the said C. D. should happen to depart this life during my absence that the said E. F. should act as my attorney in the room or stead of the said C. D. *Now know therefore* that I the said A. B. *Have made* &c. the said E. F. my &c. attorney for me and in my name after the decease of the said C. D. (in case he shall happen to die during my absence) to do make sign seal and execute all such acts deeds matters and things whatsoever as the said C. D. hereinbefore is authorized and empowered to do make and execute I the said A. B. to that intent giving and granting to and vesting in the said E. F. all and every such and the same powers and authorities so to do in as full ample and extensive a manner to all intents and purposes as are hereinbefore by these presents given and granted to and vested in the said C. D. and I do hereby agree to ratify and confirm all and whatever my said attornies or either of them shall lawfully do or cause to be done in the premises *In witness* whereof I the said A. B. have hereunto set my hand and seal this day of in the year of our Lord 185

No. DXIV.

*General.*Appointor
ratifying, &c.Appointment
of E. F. as at-
torney in case
of C. D.'s
death.

Signed sealed and delivered being first duly stamped in the presence of

No. DXV.

Another by a Merchant going Abroad.

No. DXV.

Merchant.

To all &c. A. B. of &c. sendeth greeting *Whereas* the said A. B. is shortly going to the East Indies and is desirous of appointing a person with sufficient power and authority to do all

No. DXV. <i>Merchant.</i>	acts and deeds which may be requisite and necessary for the management of his estate monies property and affairs during his residence abroad <i>Now know ye</i> That the said A. B. <i>Doth</i> hereby make &c. his brother C. B. &c. his attorney in his name to collect and get in ask demand and receive all and every sum and sums of money now due and owing or which at any time hereafter shall be due and owing to him from any person or persons whomsoever for rent or on any other account whatsoever
To collect debts.	
To settle accounts.	<i>And also</i> in his name and behalf to adjust and settle all or any of his accounts with all and every or any person or persons with whom the said A. B. hath had or shall or may have any transactions or dealings And to compromise agree and determine or refer to arbitration all disputes or differences that have arisen or may arise between him the said A. B. and any other person or persons whomsoever
To execute deeds.	<i>And also</i> for him the said A. B. and in his name to execute all such deeds instruments and writings as he the said C. B. shall judge necessary and convenient for the appointment of new trustees under the marriage settlement of the said A. B. or for the changes of the trustees for the time being or any one or more of them and for the assignment of the trust property unto the new trustees alone or jointly with the continuing trustees
To compound for debts.	<i>And also</i> in his name or otherwise to oppose any certificate of any bankrupt (as to this see 12 & 13 Vict. c. 106, s. 198) to compound for any debt or debts owing or to be owing to him the said A. B. and take a part thereof in full for the same or to give a further or enlarged time for the payment in such manner and upon such terms as the said C. B. in his discretion shall think fit
To distrain for rents, &c.	<i>And</i> in default of payment of the said rents to distrain for the same or to bring actions to recover the same or to determine the leases by making entries on the lands and on nonpayment of any such sum or sums of money as may be due and owing to the said A. B. on any other account whatsoever to commence and prosecute any actions or suits either at law or in equity or otherwise to act therein as to the said C. B. shall seem meet
To give acquittances.	<i>And</i> upon the receipt of the said sum or sums of money respectively or any part thereof acquittances or other sufficient discharges for the said A. B. or in his name and as his act and deed or in his own name to give and make for the same sums which he shall so receive in payment or discharge of such debt or debts as aforesaid <i>And also (a)</i> for the said A. B. and in

(a) An express power necessary in such cases, see Pref. sect. 1.

his name or otherwise to draw accept or indorse any bill or bills of exchange promissory note or notes in the course of trade as he shall think fit *And also* for the said A. B. and in his name to defend any actions or suits at law or in equity which have been already instituted and commenced against him the said A. B. *And also* to accept the transfer of any stocks funds or securities which shall or may at any time hereafter be transferred to the said A. B. or in his name *And also* to recover and receive all dividends interest and produce and sums of money now due or hereafter to become due or payable to the said A. B. by or from M. G. and D. C. bankers of the said A. B. and to adjust settle and discharge all accounts and reckonings with the said bankers *And also* by and out of all the monies which shall come to his hands by virtue of these presents to pay satisfy and discharge all or any debt or debts sum or sums of money now due or hereafter to become due and owing from the said A. B. to any person or persons whomsoever *And* to adjust and arrange liquidate settle allow and determine all and every or any accounts reckonings disputes or differences which now are depending and unsettled between the said A. B. and them *And also* by and out of the said monies which shall come to the hands of him the said C. B. as aforesaid to retain pay and reimburse himself all costs charges and expenses which he shall or may incur or which shall or may be occasioned to him in or about the affairs of him the said A. B. *And further* to place out or invest all or any part of such monies in the purchase of a share or shares of and in the public stocks or funds of Great Britain or upon Government securities in the name of him the said A. B. and from time to time to alter vary and transfer the same and again to lay out and invest the same in the purchase of other stocks funds and securities of the same or the like nature as he the said C. B. shall think most for the benefit of the said A. B. *And also* for the said A. B. and in his name to sign seal and deliver any deed covenant or instrument in writing whatsoever which shall appear to the said C. B. for the benefit of the said A. B. or requisite to be done by him concerning the same debts or any other affair whatsoever *And also* to exonerate and discharge all and every or any of the estates of the said A. B. which now or hereafter may be in mortgage to any person or persons whomsoever of and from all equity of redemption to which the same now are or hereafter may be subject as to the said C. B. shall appear reasonable or requisite and either with or without any considera-

No. DXV.

Merchant.

To draw bills, &c.

To defend actions.

To accept transfer of stock, &c.

To discharge debts of principal.

And adjust accounts.

To reimburse himself.

And invest the monies in stock, &c.

To exonerate mortgaged estates.

No. DXV.

Merchant.

To join with
trustees in
making mort-
gages, &c.

tion for the same equity of redemption *And also* to join with the trustee or trustees for the time being in making or executing any mortgage or mortgages of all or any part of the lands and real estate of the said A. B. as occasion may require and in receiving and giving discharges for the monies to be taken upon the security of the same mortgages and when and as occasion shall serve in redeeming the same and in entering into covenants for the payment of the mortgage money as he the said C. B. shall think fit *And also* to join with the trustee or trustees as aforesaid in making sale or disposition of any of the messuages or tenements lands and hereditaments of the said A. B. whatsoever and also in giving and signing all such receipts and executing all such releases assignments conveyances and assurances and entering into such covenants as to the said C. B. shall seem meet *And also* to carry into effect and perform all agreements or contracts entered into by the said A. B. with any person or persons whomsoever *And also* one or more attorney or attornies under the said C. B. for all or any of the purposes aforesaid to make nominate or appoint as occasion may serve *And also* generally to do all such other matters and things for him the said A. B. or in his behalf in and about the premises in every respect as he the said A. B. might or could do if he were personally present he the said A. B. agreeing to ratify &c. *And* the said A. B. doth hereby direct that all payments which shall be made to his said attorney or attornies by any person or persons before he she or they shall have notice of his death or revocation of the authority hereby given shall be binding on his heirs executors or administrators notwithstanding his death or revocation of such authority before such payments shall be made to the said C. B. *In witness &c.*

To carry the
contracts of
principal into
effect.

Also to appoint
other attornies.

As to the death
of A. B.



No. DXVI.

To demand
Rent.

No. DXVI.

*Power of Attorney to demand Rent, and on Default of
Payment to Re-enter.*

Obs. As to the stamp, see Pref. sect. 3.

To demand rent
and re-enter.

Know all &c. That I A. B. of &c. *Do* hereby make &c. C. D. of &c. my &c. to demand and receive of and from J. L. of &c. on the day of next at the sum of £ of lawful &c. which will become due unto me the said A. B. from

the said J. L. on the said day of for one half-year's rent for the messuage farm and lands with their appurtenances which by an indenture of lease bearing date the day of in the year &c. were by me the said A. B. demised unto the said J. L. for a certain term of years And in default of payment of the said sum of £ I give and grant unto my said attorney full power and authority to enter into and upon the said messuage &c. and premises by the before-mentioned indenture of lease demised and thereof for me and in my name stead and place to take possession to the intent that the indenture of lease may become void according to a certain proviso therein contained *And further* to execute and perform all things requisite and necessary to be done in and about the execution of these presents I ratifying &c. and agreeing to ratify &c. *In witness &c.*

No. DXVI.
*To demand
Rent.*

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No. DXVII.

Power of Attorney to distrain (a).

No. DXVII.
To Distrain.


Obs. As to the stamp, see Pref. sect. 3.

Know all &c. That I A. B. of &c. widow relict and administratrix of C. B. late of &c. deceased *Do* hereby make &c. C. D. of &c. and E. F. of &c. jointly and severally my true and lawful attorney and attornies for me and in my name place or stead jointly or severally to receive of and from the said I. F. &c. their undertenants agents or assigns or of and from whomsoever else it doth or may concern and of and from all other tenants and occupiers of certain pieces or parcels of land situate &c. and which were heretofore demised by W. B. deceased the father of the late C. B. by certain indentures of lease bearing date respectively the day of and the day of &c. at and under the yearly rents or sums in all the said leases reserved and on which said pieces or parcels of ground or on part thereof further messuages or tenements have been built now or lately in the occupation of J. F. G. P. S. E. and W. S. their under-

(a) See power of attorney to distrain, No. CCCCIX., *ante*, p. 947; power of attorney to recover rent-charge in lieu of tithes, No. CCCCXI., *ante*, p. 948.

No. DXVII.
To Distrain.

tenants or assigns all sums of money which now or shall or may at any time or times hereafter grow due and payable from and out of the said premises for such rent as aforesaid and upon nonpayment thereof or of any part thereof for me and in my name and for my use as administratrix to enter into or upon the said premises or any part thereof and to seize and distrain all or any goods or chattels that shall be then and there found or to make such distress off the premises as the law permits and such distresses so to be made as aforesaid to take carry away and detain until payment of such rent so in arrear as aforesaid shall be faithfully made and the same shall be delivered in due course of law and on nonpayment thereof to sell and dispose of the same according to law or to commence and prosecute any action suit bill plaint avowry or information or to take all such other lawful ways and means for the recovery thereof and the same to discontinue adjust release and discharge as to my said attorney shall seem meet and as the case shall require and on receipt thereof or of any part thereof receipts releases and other good and sufficient acquittances and discharges in the law to make and give for the same *And also* for me and in my name as administratrix as aforesaid to settle and adjust all accounts for ground rent and land tax and to pay all such sums of money as shall from time to time appear to be justly due and owing from and out of the said rent to &c. his steward agent or assigns or whomsoever else it shall or may concern under and by virtue of a certain derivative lease by him thereof granted to the said W. B. by indenture bearing date &c. and to take and receive such receipts and acquittances for the same as the case shall require And generally for me and in my name to do and perform or cause or procure to be done and performed all and whatsoever shall be requisite in the premises I the said A. B. hereby giving and granting to my said attorney my full and whole power and authority herein and hereby covenanting to allow ratify and confirm all and whatsoever he shall or may lawfully do or cause to be done therein by virtue of these presents *In witness &c.*



No. DXVIII.

Power of Attorney to execute a Deed of Composition and receive a Dividend.

No. DXVIII.

*Deed of
Composition.*

Know &c. That I A. B. of &c. *Do* hereby make constitute and appoint C. D. of &c. my true &c. for me and in my name and as my act and deed to sign seal deliver and execute an indenture bearing date &c. made or mentioned to be made &c. between (*trustees*) creditors of (*debtor*) of &c. and trustees for and on the behalf of other the creditors of the said (*D.*) of the first part (*creditors*) creditors also of the said (*D.*) of the second part and the said (*D.*) of the third part *And also* for me and in my name and to and for my proper use and behoof to demand and receive of and from the said (*T.*) either or any of them all monies due and payable to me upon and by virtue of the said indenture as well for my share and dividend of the sum of £ already received by and in the hands of the said (*T.*) some or one of them of the estate of the said (*D.*) as of the sum of £ of the debts of the said (*C.*) yet outstanding and unreceived or of so much thereof as shall be recovered and received in proportion to the debt of £ owing to me by the said (*D.*) And I do hereby give &c. to my said attorney my whole power &c. and authority in the premises to do and perform all matters and things for the recovering and receiving of the monies due or which shall become payable to me by virtue of the said indenture as fully as I might do and perform And I do hereby for myself my executors and administrators agree to ratify confirm and allow all and whatsoever the said (*D.*) shall lawfully do or cause to be done in or about the premises by virtue of these presents *In witness &c.*

No. DXIX.

Power of Attorney from one Executor and Trustee to others to act in his Absence.

No. DXIX.

*To act as
Executors, &c.*

To all &c. Whereas [*recite will*] And whereas the said A. W. departed this life on or about &c. without having revoked or altered his said last will and testament in all or any of the

No. DXIX.
*To act as
 Executors, &c.*

matters aforesaid and since his death the said (*E.*) have all duly proved his said will in the Prerogative Court &c. *And whereas* the said A. B. is about shortly to depart from for and is desirous of enabling so far as he lawfully may the said other executors and trustees of the said testator to act in the execution of the trusts of the said will and in the management and conduct of the estate and affairs of the said testator during his absence as fully and effectually as if he the said A. B. were present *Now know ye* That for the purposes aforesaid he the said A. B. *Doth* make constitute and appoint the said (*E.*) and the survivor and survivors of them to be his true &c. attornies in his name and on his behalf as one of the trustees and executors of the said will of the said testator to transact manage and negotiate all and singular the matters and things whatsoever which in anywise relate to or concern the execution of the said trusts or the management disposal and conduct of the estate and affairs of the said testator and to that end for him the said A. B. and in his name and on his behalf to settle and sign and also if necessary to seal and as his act and deed in due form of law to deliver all and every act and acts releases receipts acquittances deeds writings and instruments whatsoever which shall or may be or to them the said (*E.*) or the survivor of them shall seem necessary and expedient for that purpose and generally to execute and perform or cause to be executed done or performed all such acts deeds matters and things whatsoever as shall be anywise necessary and expedient to be done by or on behalf of the said A. B. in or about the execution of the trusts aforesaid or any of them And all whatever his said attornies shall do or cause to be done in pursuance of the power hereby granted he the said A. B. doth hereby and at all times hereafter shall and will ratify confirm and allow *In witness &c.*



No. DXX.

No. DXX.
*To receive and
 give Possession.*

Power of Attorney to receive and give Possession.

This Indenture &c. Between the Master and Brethren &c. of the first part (*lessee*) of &c. of the second part (*attornies for the lessors*) of &c. of the third part and (*attorney for the lessee*) of &c. of the fourth part *Witnesseth* That for and in consideration of the lawful surrender to the said (*lessors*) of a lease bearing

date &c. and made between &c. being a lease made and granted by the said (*lessors*) to the said (*lessee*) his heirs and assigns for the three lives therein named and for and during the natural life of the longest liver of them of the close lands and hereditaments hereinafter described and intended to be hereby granted and demised And also in consideration of a certain fine foregift or sum of £ they the said (*lessors*) *Do* and each of them *Doth* make constitute and appoint the said (*attornies*) to be their true &c. attornies for them and in their names and place jointly or either of them severally for them the said (*lessors*) to enter into and upon the said hereby granted and demised premises or any part thereof in the name of the whole and thereof to take peaceable and quiet possession and seisin and after peaceable and quiet possession and seisin so had and taken for them and in their names to deliver peaceable and quiet possession and seisin of and in the said premises or any part and parcel thereof in the name of the whole unto the said (*lessee*) his heirs or assigns or his certain attorney in that behalf lawfully authorized and duly appointed to receive the same And this *Indenture further witnesseth* That the said (*lessee*) *Doth* make constitute and appoint the said (*attorney*) his true &c. in his name and place &c. to enter into the said hereby granted and demised premises or any part thereof in the name of the whole and thereof to accept receive and take peaceable possession of and from the said (*attornies*) in that behalf legally authorized and duly appointed to deliver the same *In witness &c.*

No. DXX.

*To receive and
give Possession.*

No. DXXI.

*Power of Attorney to receive Dividends and sell Shares in the
Commercial Dock Company.*

Know &c. That I A. B. of &c. *Do* hereby make constitute and appoint C. D. of &c. for me and in my name or in the name of him the said C. D. as he shall be advised or think proper to ask demand sue for recover and receive of and from Company or any person or persons who is are or shall be authorized or liable to pay the same the dividends interest and produce now due and payable and all dividends interest and produce thenceforth to become due and payable upon or in respect of

No. DXXI.

*To receive
Dividends.*

No. DXXI.

*To receive
Dividends.*

the shares of me the said A. B. of and in the said company or in respect of such shares as I shall from time to time be possessed of or entitled to and as the same dividends interest and produce shall become due and payable and upon payment or receipt of the dividends interest or produce or any part thereof to give acquittances and discharges for the same And upon nonpayment thereof to bring and commence any action or process at law or in equity for the recovery thereof and to prosecute or discontinue the same or otherwise to act therein as the said C. D. shall think fit *And also* for me and in my name or in the name of the said C. D. to make sale and dispose of all or any of the shares of me the said A. B. to any person or persons who shall be willing to purchase the same respectively or any of them for such prices or sums of money as the said C. D. shall think proper so nevertheless that such sales be made in conformity to the rules and regulations of the said company and upon receipt of the money to arise by such sales to the purchaser or respective purchasers thereof to give effectual releases and discharges And to make and execute every other act matter and thing which shall be requisite for effectuating and completing such sales as I the said A. B. could do if I did and executed the same myself I the said A. B. hereby giving and granting unto the said C. D. my full power and authority in the premises and hereby agreeing to ratify and confirm all acts done by the said C. D. in execution of these presents *In witness &c.*

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No. DXXII.

No. DXXII.

*To receive
Legacy.**Another to receive a Legacy.*

To all &c. Whereas F. C. late of &c. by her last will and testament bearing date &c. did give and bequeath unto me A. B. the sum of £ to be paid unto me upon my sealing and delivering a general release to the executor of the said F. C. *And whereas* the said F. C. shortly after died without revoking her said will and the same was proved by H. C. as her executor named in the said will *And whereas* I have signed such general release to be delivered to the said H. C. as hereinafter is mentioned *Now know ye* That I the said A. B. do hereby make

constitute and appoint C. D. of &c. my true &c. for me &c. to ask &c. of and from the said H. C. the said legacy of £ so given and bequeathed to me by the said F. C. by her last said will as aforesaid and upon receipt thereof by my said attorney to deliver the said general release so sealed as aforesaid I hereby agreeing to ratify &c. [see *last Precedent*] *In witness &c.*

No. DXXII.

*To receive
Legacy.*

—◆—

No. DXXIII.

Another to receive the Distributive Share of an Intestate's Estate.

No. DXXIII.

*To receive
Distributive
Share.*

To all &c. Whereas my sister I. B. lately died intestate by means whereof and by virtue of the statutes for the distribution of the personal estate of intestates I am become legally entitled to a distributive share of my said sister's personal estate *Now know ye* That I the said A. B. *Do* hereby make constitute and appoint C. D. of &c. my true and lawful attorney to ask demand sue for and receive of and from D. B. administrator of the said I. B. all my distributive share of the personal estate of my said sister which I am by law entitled unto and all other sums of money goods chattels and personal estate whatsoever which by my said sister's dying intestate or on any other account belong or of right ought to belong to me And upon receipt thereof acquittances and other legal discharges for me and in my name to give to the administrator of my said sister for what my said attorney shall receive and to make any agreement or composition for my said distributive share of my said sister's personal estate or for any other matter or thing due to me from her estate and whatsoever my said attorney shall do or cause to be done in and about the premises I do hereby ratify and confirm *In witness &c.*

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No. DXXIV.

No. DXXIV.

*To receive
Money.**Power of Attorney to receive Money directed to be paid by
Decree or Order of the Court of Chancery (a).*

Know all to whom these Presents shall come That A. B. of &c. sendeth greeting Whereas by an order made in the High Court of Chancery by the Lord High Chancellor of Great Britain bearing date the day of in a certain cause depending in the same court wherein A. B. is plaintiff and C. D. defendant it was amongst other things ordered [recite ordering part of order] (If there has been a certificate recite And whereas the judge to whom this cause is attached by his certificate dated the day of has certified &c.) Now know ye That I the said A. B. by these presents Do make ordain constitute and appoint C. D. and R. S. of &c. my true and lawful attornies and attorney jointly and severally hereby giving and granting full power and authority for them my said attornies or either of them for me and in my name and to my use to ask demand and receive of and from the said defendant the said sum of £ And upon payment of the said sum of £ or any part thereof receipts acquittances and other proper discharges in the name of me the said A. B. to make and give for the same and generally to do and transact any other act matter or thing for the obtaining and receiving the same sum of £ to the use of me the said A. B. as fully as I myself could or might do if I were personally present I the said A. B. ratifying and confirming and agreeing to ratify and confirm all and whatsoever my said attornies or either of them jointly or severally may do or cause to be done in and about the premises by virtue of these presents In witness &c.

DXXV.

No. DXXV.

*To receive
Stock.**Power of Attorney to receive Bank Stock and transfer
the same.**Obs. As to the stamp in this case, see Pref. sect. 3.*

Know all &c. That A. B. of &c. and C. his wife (daughter and administratrix of all and singular the goods chattels rights and credits of D. F. deceased) Do and each of them Doth hereby

(a) See Smith's Chancery Pr. p. 544.

nominate constitute and appoint H. E. of &c. to be their true and lawful attorney for them the said A. B. and C. his wife and for each of them and in their names place and stead and to the use of the said A. B. to ask and receive all dividends now due to the said A. B. and C. his wife or either of them from the Governor and Company of the Bank of England and upon the receipt thereof or of any part thereof acquittances or other sufficient discharges to make and give for the same and also to assign and transfer the sum of £ in the Bank stock and all and every other stock and stocks in the said Bank of England which they the said A. B. and C. his wife or either of them have or hath or which she the said C. is entitled to as administratrix of the said D. F. or otherwise to the said A. B. or to such other person or persons as the said A. B. shall order and direct *And further* to do execute and perform all and singular deeds acts and things touching and concerning the premises as fully and effectually as they the said A. B. and C. his wife or either of them might do execute or perform the same *In witness &c.*

No. DXXV.

*To receive
Stock.*

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No. DXXVI.

Another to accept, pay for, and sell Bank Stock.

Know all &c. That I A. B. of &c. *Do* hereby make constitute and appoint C. D. of &c. my true and lawful attorney to accept of all such capital stock in the Bank of England as I the said A. B. have already bought or contracted to buy or shall hereafter buy or contract to buy of any person or persons whomsoever upon the transferring thereof according to the usual manner of transferring the said stock and pay such sums of money or consideration for the purchase of such capital stock upon the transferring thereof from time to time as I shall in that behalf order and likewise for me and in my name to and for my own proper use to sell and transfer all or any such stock as I now have or shall buy or purchase in the said Bank of England to such person or persons and in such manner as I shall from time to time direct and appoint by writing under my hand *And also* for my use to receive the monies or considerations which shall become due and payable for or upon the sale of all or any such stock as he shall so sell or transfer for on my account as aforesaid and to give sufficient discharges for the same *In witness &c.*

No. DXXVI.

*To accept
Stock.*

No. DXXVII.

No. DXXVII.

*To sell and
surrender
Copyholds.*

General Power of Attorney to sell Copyholds and surrender to a Purchaser (a).

Know all Men by these Presents That I A. B. of &c. one of the customary or copyhold tenants of the manor of in the county of *Do* by these presents make ordain constitute and appoint C. D. of &c. and E. F. of &c. jointly and severally and the survivor of them my true and lawful attornies and attorney for me in my name and on my behalf to sell and dispose of either by public auction or private contract and for the best price or prices that can in their or his judgment be had or gotten for the same *All* or any part of the customary or copyhold hereditaments hereinafter described respectively lying within and holden of the said manor of and the customary fee simple and inheritance thereof (that is to say) *All* &c. (*parcels*) with their appurtenances (to which same premises I was admitted tenant to hold to me and my heirs for ever according to the custom of the said manor at a general court held for the said manor on the day of) *And also* to make and enter into any contract or contracts in writing with any person or persons whomsoever in relation to such sale or sales respectively as to my said attornies or attorney shall seem meet *And further* for me in my name and on my behalf either at some general or special court baron or customary court to be holden for the said manor or out of court at any time or times after such sale or sales respectively to surrender into the hands of the lord or lady lords or ladies of the said manor for the time being and according to the custom of the same manor the said customary or copyhold lands hereditaments and premises so to be sold or any of them and the reversion and reversions remainder and remainders thereof and all my estate and interest therein or thereto to the use and behoof of the person or persons purchasing the said premises respectively as aforesaid and of his her or their heirs and assigns for ever or as he she or they shall direct or require and according to the custom of the manor of aforesaid *And moreover* for me and in my name and as my act and deed to sign seal execute and deliver any deed or deeds to be prepared by and on the part of all or any such pur-

(a) See 2 Scriv. on Copyholds, p. 834. See *ante*, p. 1173, n.

chasers as aforesaid pursuant to such contract or contracts for sale respectively containing all reasonable and proper covenants on the part of me the said A. B. my heirs executors and administrators for the estate title possession freedom from incumbrances and further assurance of the hereditaments and premises respectively so to be sold as aforesaid *And* for the production of any deeds instruments or writings constituting my title to the same respective premises which according to the usage and practice in the like cases are to remain in my custody or power *And* for the delivery of attested or other copies thereof from time to time thereafter at the request costs and charges of such purchaser or purchasers respectively his her or their appointees heirs or assigns *And* generally for me and in my behalf to do perform and execute all or any such other acts deeds assurances matters and things as shall be necessary or expedient in and about the premises and as fully and effectually to all intents and purposes as I myself could or might do being personally present *And* I do hereby expressly declare and agree that the receipt and receipts which shall be given by my said attornies or agents or either of them for all or any part of the monies to arise from any such sale or sales as aforesaid shall be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers or other person or persons paying the same monies respectively for all or so much and such part thereof as shall be in such receipt or receipts respectively expressed or acknowledged to be received *And* that such purchaser or purchasers or other person or persons shall not afterwards be bound to see to the application of the same monies nor be responsible for the loss misapplication or nonapplication thereof or any part thereof *And* I direct that the same monies when so received shall be paid forthwith into the hands of Messrs. bankers in to my account and for my use or to such other person or persons and in such other manner as I may from time to time require by any note or writing under my hand *Provided nevertheless* and I do hereby fully authorize my said attornies or agents respectively to retain and deduct out of the said trust monies all costs charges and expenses which they respectively shall sustain or incur in the execution of the power or trust hereby reposed in them *And* I declare and direct that they shall not be responsible the one for the other of them nor for any loss which may happen by depositing the trust monies aforesaid with any person or persons whomsoever for safe custody or otherwise without

No. DXXVII.

*To sell and
surrender
Copyholds.*

No. DXXVII. their respective wilful neglect or default. *And I do hereby agree*
To sell and to ratify and confirm all and whatsoever my said attornies or
surrender attorney agents or agent shall lawfully do or cause to be done
Copyholds. by virtue of these presents *In witness &c.*

Sealed &c.

A. B. (L.S.)

No. DXXVIII.

No. DXXVIII

To surrender
Copyholds.

Power of Attorney to take Admittance of Copyhold Lands, and
after Admission to surrender.

Obs. As to the stamp, see Pref. sect. 3, p. 1234.

To all &c. Whereas R. D. and E. his wife on the day
of which was in the year of our Lord Did surrender
into the hands of the lord of the manor of G. in the county of S.
one close of land called N. containing by estimation acres
being parcel of and one other close &c. to the use and
behoof of A. B. and his heirs for ever according to the custom
of the said manor *Subject nevertheless* to a condition for making
void the same if the said R. D. and E. his wife should pay unto
the said A. B. the sum of £ on a day long since past *And*
whereas the said surrender was made unto the said A. B. *In*
trust for the Dean and Chapter of &c. and the monies there-
upon lent were the proper monies of the said Dean and Chapter
and the condition of the said surrender is not yet performed
Now know ye That the said A. B. in discharge and performance
of the trust so in him reposed as aforesaid at the request and by
the direction of the said Dean and Chapter as aforesaid *Doth*
by these presents make &c. C. D. of &c. his &c. for him &c. to
receive have and take admittance of and from the lord of the
said manor of C. aforesaid or his steward of the court thereof in
and to the said several closes of land and premises before men-
tioned with the appurtenances according to the custom of the
manor aforesaid and at any time after such admittance so had
and taken to surrender into the hands of the lord of the said
manor all the said several closes &c. to the use or behoof of
such person or persons and their heirs as the said Dean and
Chapter shall nominate or appoint *And further* to perform &c.
In witness &c.

No. DXXIX.

Letter or Power of Attorney to Two Copyholders to surrender Copyholds to the Uses of Settlement.

No. DXXIX.

*To surrender
Copyholds.*

To all &c. Whereas [recite settlement, or will devising copyholds to be settled as freeholds] Now &c. that the said A. B. and C. D. in performance of the trusts of the said will *Have* and each of them *Hath* made &c. I. L. of &c. and N. L. of &c. two of the customary tenants of the manor of &c. aforesaid their and each of their true and lawful attornies jointly or either of them severally by themselves or himself or together with any other person or persons for the considerations and purposes aforesaid by a good and sufficient surrender and surrenders to be acknowledged in open court or otherwise according to the custom of the manor of aforesaid to surrender into the hands of the lord of the said manor of All &c. And all the estate &c. To the end and intent that the lord of the said manor may grant the same to the uses hereinafter mentioned (that is to say) [*here set out the uses*] And to substitute and sign the same surrender in the name and names of the said A. B. and C. D. or either of them or otherwise and to acknowledge the same for them or of either of them and generally to make &c. *In witness &c.*

No. DXXX.

Substitution under a Power of Attorney.

No. DXXX.

*Substitution
(Attorney).*

Obs. As to the delegation of a power, see *ante*, APPOINTMENTS, Pref. sect. 13, p. 235; as to the stamp, see POWERS, Pref. sect. 3, p. 1234.

Know all Men by these Presents That we A. B. of &c. and C. D. of &c. in pursuance and by virtue of the powers invested in us by E. F. of &c. by a certain deed poll bearing date the day of 18 *Do* hereby substitute depute and appoint A. K. our true and lawful attorney in our names as attornies of the said E. F. to sign and execute a certain deed &c. [*or do any other act specified in the power as the case may be*] giving and by these presents granting unto the said A. K. our full and whole derived powers and authority in the premises in

No. DXXX.
Substitution
(Attorney).

as ample a manner to all intents and purposes as we have received the same from the said E. F. by the said hereinbefore in part recited deed poll And generally to do perform and execute all and whatsoever the said A. K. shall judge necessary to be done for the purposes aforesaid we the said A. B. and C. D. as well for the said E. F. as for ourselves allowing and agreeing to allow all acts and deeds which he the said A. K. shall do or execute in relation to the premises *In witness &c.*

PRESENTATIONS.

Obs. 1. Presentation is the offering a clerk by the patron of an advowson to the ordinary to be instituted, and is distinguished from nomination, which is the offering a clerk to the patron. By the Statute of Frauds, all presentations must be in writing, but they need not be by deed. As to when a presentation is void, see AGREEMENTS, *ante*, pp. 170—172. GRANTS of next Presentation, *ante*, pp. 985—989.

2. A donation or presentation to any ecclesiastical benefice, dignity or promotion in England or Ireland, is charged with a stamp duty of 5*l.*; and where the net yearly value of such benefice, dignity or promotion shall amount to 300*l.* or upwards then for every 100*l.* thereof over and above the first 200*l.* a further duty of 5*l.*, 5 & 6 Vict. c. 79, 6 & 7 Vict. c. 72, England; 5 & 6 Vict. c. 82, Ireland. The value is to be ascertained by the certificate of the Ecclesiastical Commissioners for England or Ireland respectively, and to be written upon the instrument in England, 6 & 7 Vict. c. 72, s. 2. By the same acts, a nomination to any perpetual curacy in England is charged with a stamp duty of 1*l.* 10*s.*

No. DXXXI.
Rectory.

No. DXXXI.

Presentation to a Rectory or Vicarage.

To the Right Reverend Father in God by divine permission Lord Bishop of to his vicar-general in spirituals or to any other person or persons having or to have sufficient authority in this behalf A. B. of in the county of esquire the true and undoubted patron of the rectory [*or* “vicarage”] and parish church of in the county of and in your lordship’s diocese of greeting I present to your lordship

and to the rectory [*or* “vicarage”] and parish church of
 aforesaid now void by the natural death [*or* “resignation”]
 of the last incumbent there and to my presentation in full
 right belonging my beloved in Christ C. D. of bachelor of
 arts humbly praying that your lordship would be graciously
 pleased to admit and canonically to institute him the said C. D.
 to the rectory [*or* “vicarage”] and parish church of aforesaid
 to invest him with all and singular the rights members and
 appurtenances thereunto belonging to cause him to be inducted
 into the real actual and corporeal possession thereof and to do
 all other things which to your pastoral office may in this case
 appertain or belong *In witness &c.*

No. DXXXI.

Rectory.

PURCHASE, PURCHASE DEEDS.

- | | |
|--|--|
| 1. <i>Definition.</i>
<i>Purchase distinguished from Descent.</i>
<i>Purchase for a Consideration.</i>
2. <i>Purchase Deeds, what so called.</i>
<i>When necessary.</i>
3. <i>Parties to the Conveyance.</i>
<i>Who can purchase or otherwise.</i>
<i>Aliens.</i>
<i>Felons.</i>
<i>Corporations.</i>
<i>Infants.</i>
<i>Femes Covert.</i>
<i>Mortgagees and Trustees.</i> | 4. <i>Description of Parties.</i>
5. <i>Recitals.</i>
6. <i>Witnessing Part.</i>
<i>Voluntary Conveyances.</i>
7. <i>Granting Part.</i>
8. <i>Habendum.</i>
<i>Covenants by Vendor.</i>
<i>Qualified Covenants.</i>
<i>Real Covenants.</i>
<i>Covenant for Production of Title Deeds.</i>
9. <i>Stamp Duty.</i>
<i>General Words.</i> |
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SECT. 1. The word purchase is taken in a twofold sense; 1st. In its most extended acceptation it is defined to be a possession of lands and tenements, which a man hath by his own act or agreement, and not by descent from any of his ancestors or kindred, Litt. sect. 12. In this sense it is contradistinguished from acquisition by right of blood, and includes every other method of coming to an estate except that by inheritance, whereby an estate is vested in a man, not by his own act or agreement, but by operation of law; and by an old rule, where the heir took an estate for life, remainder to his right heirs in fee, the heir was held to take by descent only; for wherever the ancestor took an estate for life, the heir could not by the same con-

Definition.
Purchase distinguished from descent.

Purchase,
Purchase Deeds.Purchase for a
consideration.Purchase
deeds, what so
called.When neces-
sary.Parties to the
conveyance.
Who can pur-
chase or other-
wise.Aliens.Felons.Corporations.Infants.Femes covert.Mortgagees
and trustees.Description of
parties.

veyance take by purchase, but this rule is now reversed. 2ndly. In its ordinary and confined acceptation it is applied only to such acquisitions of land as are obtained for money or some other valuable consideration.

2. Purchase deeds are properly those deeds by which corporeal and incorporeal hereditaments are conveyed. Before the Statute of Frauds, corporeal hereditaments, which were said to lie in livery, might have been transferred by verbal contract only, provided it was accompanied with livery of seisin; but incorporeal hereditaments, which were said to lie in grant, could be conveyed only by deed. Now neither can be conveyed without a deed, or at least a note in writing, which in some cases is sufficient.

3. Every person who gives or takes by his contract should be a party to the deed of conveyance. In every well-made deed it is necessary that the person making it be able to grant, and the person to whom it is made be able to take or hold.

An alien may purchase, but he cannot hold; for upon office found the queen shall have the land, Co. Litt. 2 b. So a person attainted of felony may purchase, but he can do so only for the benefit of the queen. So corporations may purchase, but they cannot hold without a special licence from the queen, *Ib.*

An infant may purchase, but he may waive or disagree to the purchase when he is of full age, *Ib.* An infant may also convey, but, except in the case of settlements (see *post*, SETTLEMENTS), he may either affirm or avoid the deed, Co. Litt. 51 b.

A *feme covert* may purchase, but her husband may disagree thereto; and although he agree to it, yet after his death she may waive the purchase. Generally speaking, deeds executed by *femes covert*, for the purpose of conveying away their estates, are not only voidable, but absolutely void, Co. Litt. 3; Park. 3, 8, except where a woman conveys property that is at her own absolute disposal, or conveys under a power. It already appears that a married woman with the concurrence of her husband is competent to convey her estates by deed acknowledged. See *ante*, pp. 841, 914. The queen consort is able to grant and purchase without the king, Co. Litt. 3.

By the 13 & 14 Vict. c. 60, the Lord Chancellor is empowered to convey estates of lunatic trustees and mortgagees, and the Court of Chancery is authorized to convey estates of infant trustees or mortgagees. See also 15 & 16 Vict. c. 55; Shelford's Real Prop. Stat. pp. 600—634, 6th ed.

4. The parties to a deed should be regularly described by their proper christian and surnames, profession, and place of residence; but a dean and chapter and mayor and commonalty may grant by the name of the corporation, without any addition. A name acquired by repute, as in the case of a bastard, will be good enough; and the

word "issue" is a good description in a deed, equivalent to child or children, Co. Litt. 3 b. See *ante*, p. 848.

*Purchase,
Purchase Deeds.*

5. Recitals in deeds, though not formerly much used, are now held to be of great importance, serving as a key to what follows afterwards, *Moore v. Magrath*, Cowp 9; see *ante*, pp. 849--851. They likewise serve sometimes as evidences of a fact, as when it cannot be proved that a deed was actually executed and is lost, the recital of it in another deed is evidence of it, *Ford v. Grey*, 6 Mod. 44; S. C. 1 Salk. 285.

Recitals.

6. After the recital comes the witnessing part, beginning with a statement of the consideration. Considerations are distinguished into valuable or good considerations. Money is a valuable consideration, as also marriage. A good consideration arises from a moral obligation, as that subsisting between a parent and a child, or the love which a man bears to his family. So the payment of a man's debts is deemed a good consideration. See *ante*, pp. 852, 853.

Witnessing
part.

Where there is neither a valuable or good consideration the conveyance is termed voluntary; which, as against creditors, is void by the 13 Eliz. c. 5; and, as against purchasers for a good and valuable consideration, are void by the 27 Eliz. c. 4. So likewise conveyances for a good consideration, that is, in favour of a wife or children, are within these statutes, and are held to be fraudulent as against creditors and subsequent purchasers.

Voluntary con-
veyances.

7. After the description of the parcels, which cannot be too accurate and minute, *ante*, pp. 854--858, usually follow the general words, *ante*, p. 860, and the clause, "All the estate, &c.," *ante*, p. 861; but these are not to be considered as words of course, for if the grantor retains any portion of the estate, as in the transfer of a lease by granting an underlease, the clause of "All the estate, &c." should not be used.

Granting part.

8. After the grant follows the *habendum*, which serves to limit the estate granted, and may enlarge the gift in the premises, although it cannot abridge it, Co. Litt. 183; 2 Co. 23, *ante*, pp. 863, 864. Here the word "premises," signifying the things before mentioned, is for the first time regularly to be used, and not before. The covenants usually entered into by a vendor in fee are, First, That he is seised in fee; Secondly, That he has good right to convey; Thirdly, For quiet enjoyment by the purchaser and his heirs; Fourthly, That the lands are free from incumbrances; and lastly, For further assurance. Where a vendor has only a power of appointment, the first covenant ought to be that the power was well created and is subsisting, then follow the other covenants as before. See COVENANTS, *ante*, pp. 779--785; *post*, pp. 1262--1265.

Habendum.

Covenants by
vendor.

Covenants for title are usually qualified or restricted to the acts of the vendor or those claiming under him, but they must be so expressed

Qualified cove-
nants.

*Purchase,
Purchase Deeds.*

as to be clearly restrictive, or the courts will not construe them as such. The omission of the usual words, "for and notwithstanding any act by him done to the contrary," was held to be decisive that the covenant was general, and not restrained to the acts of the vendor, *Hesse v. Stevenson*, 3 B. & P. 565. Where a vendor takes by descent, he usually covenants against his own acts and those of his ancestors, *Browning v. Wright*, 2 B. & P. 22. Where he is entitled by devise, it is usual for him to covenant against the acts of the deviser as well as his own, *Ib.* Where he claims immediately under the person who bought the estate, then he need not covenant further back than from that person. A general covenant for quiet enjoyment is now held not to extend to the wrongful acts of strangers, 2 Saund. 178; but where a person covenants to defend a purchaser against the acts of a particular person, he is bound to do so whether the party enters by right or by wrong, *Foster v. Mapes*, Cro. Eliz. 212, recognized in *Tisdale v. Essex*, Hob. 34.

Real covenants.

These covenants are real, and pass to all the assignees of the land; therefore if a man covenant with another, his heirs and assigns, to make further assurance, it runs with the land, and the assignee shall have the benefit of it, *Middlemore v. Goodale*, Cro. Car. 503, 505; *S. C.* Sir W. Jones, 406; 1 Roll. Abr. 521 (k), pl. 6. So a covenant for quiet enjoyment, *Campbell v. Lewis*, (in error,) 3 B. & A. 392, recognizing *Middlemore v. Goodale*, *ub. sup.*, affirming *S. C.* nom. *Lewis v. Campbell*, 8 Taunt. 715; *S. C.* 3 J. B. Moore, 35; and such a covenant runs with the estate to which it relates, whether it be an estate in fee or for a term of years, *Campbell v. Lewis*, *ub. sup.*, recognizing *Noke v. Awdler*, Cro. Eliz. 436; and if lands conveyed with a covenant for further assurance be afterwards assigned to a husband and wife, they must join in the action of covenant, *Middlemore v. Goodale*, Cro. Car. 505.

**Covenant for
production of
title deeds.**

Where the deeds cannot be delivered up, it is usual to insert a covenant to produce the title deeds; sometimes it is most convenient to enter into this covenant by a separate deed. See *ante*, pp. 804—810.

Stamp duty.

9. The stamp duty payable on purchase deeds is fully stated *ante*, pp. 879—888.

General words.

After the description of the parcels in a conveyance it is usual to insert certain general words, intended more surely to pass all possible appurtenances to the property conveyed. See *ante*, pp. 860, 861. The following forms may be used in most cases:—

General Words for Manors.

Manors.

Together with all buildings erections fixtures lands pastures feedings wastes warrens commons mines minerals quarries furzes trees woods underwoods coppices and the ground and soil thereof

fences hedges ditches ways waters watercourses fishings fisheries *General Words.*
 fowlings courts leet courts baron and other courts views of frank-
 pledge and all that to view of frankpledge doth belong mills
 mulctures customs tolls duties reliefs heriots fines sums of money
 amerciaments waifs estrays chief rents quit rents rents charge
 rents seck rents of assize fee-farm rents services royalties juris-
 dictions franchises liberties privileges easements profits advan-
 tages emoluments hereditaments and appurtenances whatsoever
 to the said manor or lordship or reputed manor or lordship and
 hereditaments or any of them belonging or appertaining or with
 the same or any of them now or heretofore demised occupied or
 enjoyed or reputed or known as part parcel or member of them
 or any of them or appurtenant thereto And all the estate right
 title interest property claim or demand whatsoever of him the
 said in to and out of the same premises and every part
 thereof And all such deeds papers writings and muniments of
 title whatsoever relating to or in anywise concerning the said
 hereditaments and premises or any of them as are now in the
 custody possession or power of the said (*vendor*) or which he
 can obtain without suit at law or in equity [*As to grant of*
deeds, see ante, p. 862] [It is said that the practice of granting
 the deeds is now obsolete, since it has been established that
 whoever is entitled to the land, is entitled to all the deeds
 affecting it, and pass by a conveyance of it without being
 named, 1 Davidson's Conv. p. 529, 2nd ed. But the clause
 should be inserted in mortgages for terms of years. See *Id.*,
 pp. 529, 533; *ante, p. 1137, n.*]

General Words for Messuages and Lands.

Together with all buildings erections fixtures commons hedges *Messuages and*
 ditches fences ways waters watercourses liberties privileges ease- *Lands.*
 ments advantages and appurtenances whatsoever to the said
 and hereditaments or any of them appertaining or with the same
 or any of them now or heretofore demised occupied or enjoyed
 or reputed or known as part or parcel of them or any of them or
 appurtenant thereto And all the estate right title interest pro-
 perty claim and demand whatsoever of him the said in
 to and out of the same premises and every part thereof.

General Words for Houses in Towns.

Together with all outhouses buildings erections fixtures cellars *Houses in*
 areas courts courtyards cisterns sewers gutters drains ways pas- *Towns.*

General Words. sages lights watercourses liberties privileges easements advantages and appurtenances to the said messuages and hereditaments or any of them appertaining or with the same or any of them now or heretofore demised occupied or enjoyed or reputed or known as part or parcel of them or any of them or appurtenant thereto And all the estate right title interest property claim and demand whatsoever of him the said in to and out of the same premises and every part thereof.

General Words for Lands.

Lands.

Together with all buildings erections fixtures hedges ditches fences ways waters watercourses liberties privileges easements advantages and appurtenances whatsoever to the said closes of land and hereditaments or any of them appertaining or with the same or any of them now or heretofore demised occupied or enjoyed or reputed or known as part or parcel of them or any of them or appurtenant thereto And all the estate right title interest property claim and demand whatsoever of him the said in to and out of the same premises and every part thereof.

No. DXXXII.

*Freeholds by
Appointment
and Grant.*

No. DXXXII.

Conveyance by Appointment and Grant from a Vendor to a Purchaser.

Recital of title.

This Indenture made &c. Between (vendor) of &c. of the first part (purchaser) of &c. of the second part and (trustee) of the third part Whereas by a statutory indenture of release bearing date the day of 18 and made between &c. the messuages or tenements lands and hereditaments hereinafter described and intended to be hereby appointed and granted with their appurtenances were conveyed and assured to such uses upon such trusts and in such manner as the said (V.) by any deed or deeds instrument or instruments in writing to be by him sealed and delivered in the presence of and attested by two or more credible witnesses should from time to time direct limit and appoint and in default of and until such direction limitation and appointment To the use of the said (V.) and his assigns during the term of his natural life without impeachment of waste with remainder to the use of the

said (*trustee*) (*a*) and his heirs during the life of the said (*V.*) upon trust for him and his assigns and after the death of the said (*V.*) to the use of the heirs and assigns of the said (*V.*) *And whereas* the said (*P.*) hath contracted with the said (*V.*) for the absolute purchase of the messuages or tenements lands and hereditaments and the inheritance thereof in fee simple free from incumbrances at or for the price or sum of £ *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*V.*) paid by the said (*P.*) on or before the sealing and delivery of these presents for the absolute purchase of the fee simple of the hereditaments hereinafter described and intended to be hereby appointed and granted the receipt of which said sum of £ he the said (*V.*) doth hereby admit and acknowledge and from the same sum and every part thereof *Doth* hereby release and discharge the said (*P.*) his heirs executors administrators and assigns He the said (*V.*) in pursuance and in execution of the power and authority given and reserved to him in and by the said recited indenture of release and of every other power and authority in anywise enabling him in this behalf *Doth* by this present deed or instrument in writing by him sealed and delivered in the presence of and attested by the two credible witnesses whose names are indorsed as witnesses thereto direct limit and appoint that all and singular the messuages or tenements lands and hereditaments hereinafter particularly mentioned and intended to be hereby granted with their appurtenances shall from henceforth go remain and be To the uses upon and for the trusts intents and purposes hereinafter declared and contained of and concerning the same *And this Indenture also witnesseth* That in further pursuance of the said agreement and by way of further assurance he the said (*V.*) (*a*) *Doth* hereby grant and confirm

No. DXXXII.

Freeholds by
Appointment
and Grant.

Testatum.

Appointment.

Grant.

(*a*) It was formerly the practice to make the dower trustee join in the conveyance, see 1 Sugd. on Powers, 235, 7th ed., but it is now almost entirely abandoned, and a learned conveyancer observes, that a dower trustee should not be a party to any assurance, at least, where the power of appointment is exercised, 2 Davidson's Conv. 127, 2nd ed. When there is no power of appointment, or the power is not effectually executed, the dower trustee appears to be a necessary party to the conveyance, see Dart, 335. In a suit by a vendor for the specific performance of a contract for the purchase of an estate, which, by deed dated in 1841, was limited to the same uses as in the above recital, but without any power of appointment, it was held, upon an objection taken by the purchaser, that he was entitled to a conveyance of any interest which might have become vested by forfeiture or otherwise in the dower trustee, *Collard v. Roe*, 4 Jur., N. S. 431; 27 L. J., Chan. 295.

As to concurrence of dower trustee.

No. DXXXII.

*Freeholds by
Appointment
and Grant.*

Appointment
and grant to
enure to uses in
bar of dower.

Covenants by
vendor.

That power is
valid.

Right to con-
vey.

unto the said (*P.*) and his heirs *All (parcels)* and all [*general words, see ante, p. 1259*] *To have and to hold* the said messuages or tenements lands hereditaments and premises hereby appointed and granted or intended so to be with their and every of their appurtenances unto the said (*P.*) his heirs and assigns *To the uses and upon the trusts hereinafter limited and declared of and concerning the same And* it is hereby agreed and declared between and by the said parties hereto as far as they respectively are interested *That* the appointment and also the grant hereinbefore contained shall severally operate and enure to such uses upon such trusts for such estates and interests and in such manner as the said (*P.*) shall by any deed or deeds with or without power of revocation and new appointment from time to time or at any time appoint *And* in default of and until such appointment and so far as any such appointment shall not extend *To the use of the said (P.) and his assigns during his life without impeachment of waste And* after the determination of that estate by any means in his lifetime *To the use of the said (T.) and his heirs during the life of the said (P.) in trust for him and his assigns And* after the determination of the estate so limited to the said (*T.*) and his heirs as aforesaid *To the use of the said (P.) his heirs and assigns for ever And* the said (*P.*) *Doth* hereby declare that if he shall die leaving a widow such widow shall not be entitled to dower out of or in the said premises or any part thereof *And* the said (*V.*) for himself his heirs executors and administrators *Doth* hereby covenant with the said (*P.*) his appointees heirs and assigns in manner following (that is to say) *That* for and notwithstanding any act deed matter or thing by the said (*V.*) made done committed or executed or knowingly or willingly suffered to the contrary the power or authority hereinbefore exercised by the said (*V.*) or intended so to be is well and effectually created by the hereinbefore in part recited indenture of release *And* the same at the time of the sealing and delivery of these presents is in full force and in nowise suspended extinguished weakened or become void *And* that for and notwithstanding any such act deed matter or thing whatsoever as aforesaid the said (*V.*) now hath in himself good right full power and lawful and absolute authority to direct limit and appoint and grant and confirm the said messuages lands and other hereditaments hereinbefore appointed and granted or intended so to be with the appurtenances thereunto belonging to the uses and in

manner aforesaid according to the true intent and meaning of these presents *And that all and singular* the same hereditaments and premises shall and may from time to time and at all times hereafter remain continue and be to the several uses upon the trust and subject to the power hereinbefore limited and contained concerning the same *And* shall and may be peaceably and quietly held and enjoyed accordingly without any let suit trouble denial eviction ejection interruption or disturbance whatsoever of from or by the said (V.) or his heirs or any other person lawfully or equitably claiming or to claim by from through under or in trust for him or them *And* that free and clear of and from all former and other gifts grants bargains sales jointures leases mortgages annuities estates titles troubles charges and incumbrances whatsoever had made done committed or suffered by the said (V.) or any person or persons lawfully or equitably claiming or to claim by from through under or in trust for him *And moreover* that the said (V.) and his heirs and every other person having or lawfully or equitably claiming or who shall or may have or lawfully or equitably claim any estate right title or interest in to or out of the said messuages lands and other hereditaments hereinbefore appointed and granted or intended so to be or any part thereof by from through under or in trust for the said (V.) or his heirs shall and will from time to time and at all times hereafter upon every reasonable request and at the proper costs and charges of the said (P.) his heirs or assigns make do acknowledge and execute or cause and procure to be made done acknowledged and executed all such further and other acts deeds matters and things devices conveyances and assurances in the law whatsoever for the better more perfectly and absolutely appointing granting and assuring the same hereditaments and premises and every part thereof with the appurtenances To the uses upon the trust and subject to the power hereinbefore limited and declared concerning the same as by the said (P.) his heirs or assigns or any of the parties interested in the premises or his or their counsel in the law shall be reasonably advised or devised and required and be tendered to be made done and executed *In witness &c.*

No. DXXXII.

Freeholds by
Appointment
and Grant.For quiet en-
joyment.Free from
incumbrances.Further
assurance.

No.
DXXXIII.
*General
Precedent.*

No. DXXXIII.
General Precedent.

Obs. For variations, where it is necessary to bar dower, see *ante*,
Conveyance by Appointment and Grant, pp. 1260--1262.

This Indenture made the day of between (*vendor*)
of &c. of the one part and (*purchaser*) of &c. of the other part
Whereas the said (*V.*) is seised or entitled for an estate of inher-
itance in fee of or to the messuages or tenements lands and
hereditaments [*or* "the several pieces or parcels of ground and
the messuages or tenements thereon erected"] which are here-
inafter particularly described and intended to be hereby granted
And whereas the said (*P.*) hath contracted and agreed with the
said (*V.*) for the absolute purchase of the fee simple and in-
heritance of and in the said pieces or parcels of land messuages
or tenements and premises at or for the price or sum of £

free from all incumbrances [except the several leases made
thereof by the said (*V.*) which are hereinafter mentioned and
excepted] [*or* "*Whereas* the said (*V.*) being seised and possessed
of or otherwise well entitled to the said pieces &c. hereinafter
described hath contracted with the said (*P.*) for the sale to him
thereof at or for the price or sum of £ and the same are

now intended to be granted to the said (*P.*) in the manner
hereinafter expressed"] *Now this Indenture witnesseth* That
in pursuance of the said agreement and for carrying the same
into effect and in consideration of the sum of £ to

the said (*V.*) paid by the said (*P.*) at or immediately before
the sealing and delivery of these presents for &c. (see *ante*, p.
1261) the payment and receipt whereof the said (*V.*) doth hereby
admit and acknowledge and from the same and every part
thereof doth acquit release and discharge the said (*P.*) his
heirs executors administrators and assigns and every of them
by these presents He the said (*V.*) *Doth* hereby grant and

confirm unto the said (*P.*) *All those* &c. Together with [*general*
words, see *ante*, p. 1259] *To have and to hold* the said messuages
or tenements lands and hereditaments and all and singular other
the premises hereby granted or intended so to be unto the said
(*P.*) and his heirs to the use of the said (*P.*) his heirs and assigns

for ever *And* the said (*V.*) doth hereby for himself his heirs
executors and administrators covenant with the said (*P.*) his heirs
and assigns in manner following (that is to say) That notwith-

Contract for
sale.

Testatum.

Général words.

Habendum.

Covenants.

That vendor is

standing any act deed matter or thing by the said (V.) or by the said deceased at any time heretofore made done omitted executed or knowingly or willingly suffered to the contrary he the said (V.) now is lawfully rightfully and absolutely seised of or well entitled to the messuages or tenements lands hereditaments and other the premises hereby granted or intended so to be and every part thereof for an absolute and indefeasible estate of inheritance in fee simple without any condition use trust power of revocation or other restraint cause matter or thing whatsoever to alter defeat incumber revoke or make void the same *And* that notwithstanding any such act deed matter or thing as aforesaid he the said (V.) now hath in himself good right full power and absolute authority to grant and convey the said messuages or tenements and other hereditaments hereby granted or intended so to be with their appurtenances unto and to the use of the said (P.) his heirs and assigns in manner aforesaid and according to the true intent of these presents *And* that it shall be lawful for the said (P.) his heirs and assigns from time to time and at all times hereafter peaceably and quietly to enter upon have hold occupy possess and enjoy the same messuages and premises with their appurtenances and to receive and take the rents issues and profits thereof and of every part thereof to and for his and their own use and benefit without any let suit trouble denial eviction interruption claim and demand whatsoever of from or by him the said (V.) or the said deceased or any person or persons lawfully or equitably claiming or to claim by from under or in trust for him or them or any or either of them *And that* free and clear and freely clearly and absolutely acquitted exonerated and for ever discharged or otherwise by the said (V.) his heirs executors and administrators well and sufficiently saved defended and kept harmless and indemnified of from and against all former and other estates titles charges troubles and incumbrances whatsoever had made executed occasioned or suffered by the said (V.) or the said deceased or either of them by any other person or persons lawfully or equitably claiming or to claim by from under or in trust for them or any or either of them *And further* that he the said (V.) and his heirs and all and every other person or persons whomsoever having or claiming or who shall or may hereafter have or claim any estate right title or interest whatsoever either at law or in equity in to or out of the said messuages or tenements lands hereditaments and premises hereby granted or intended

No.
DXXXIII.
*General
Precedent.*

absolutely
seised.

Hath good
right to convey.

Quiet enjoy-
ment.

Free from in-
cumbrances.

Further as-
surance.

No.
DXXXIII.
*General
Precedent.*

so to be or any part thereof by from under or in trust for the said (*V.*) or his heirs or the said deceased or any of them shall and will from time to time and at all times hereafter upon every reasonable request and at the costs and charges of the said (*P.*) his heirs or assigns make do and execute or cause to be made done and executed all such further and other lawful acts deeds things devices conveyances and assurances in the law whatsoever for the better more perfectly and absolutely conveying and assuring the said messuages or tenements lands and hereditaments hereby granted or intended so to be and every part thereof with their appurtenances unto the said (*P.*) his heirs and assigns in manner aforesaid as by the said (*P.*) his heirs or assigns or his or their counsel in the law shall be reasonably devised or advised and required and be tendered to be made done and executed *In witness &c.*

No. DXXXIV.
*Freeholds by
Husband and
Wife.*

No. DXXXIV.

Conveyance to a Purchaser from a Man and his Wife and a Mortgagee for a Term.

Recitals.
Will.

*This Indenture &c. Between (Vendor) of &c. and M. his wife of the first part (Mortgagee) of &c. of the second part (Purchaser) of &c. of the third part and (Trustee) of &c. of the fourth part Whereas [recite will, by which estates were devised in fee to the wife] And whereas [recite death of testator and probate of will] And whereas (a) by an indenture bearing date on or about the day of and made or expressed to be made between the said (*V.*) and M. his wife of the one part and the said (*M.*) of the other part It is witnessed that in consideration of the sum of £ to the said (*V.*) paid by the said (*M.*) he the said (*V.*) did grant and demise unto the said (*M.*) his executors administrators and assigns the messuage lands and hereditaments hereinafter described and intended to be hereby granted To hold the same unto the said (*M.*) his executors &c. for the term*

Mortgage by
demise.

(a) If it were a mortgage in fee, then say, "*And whereas by indentures of lease and release bearing date respectively the and days of and made &c. In consideration of the sum of £ to the said (*V.*) &c. paid &c. he the said (*V.*) did grant and release unto the said (*M.*) his heirs and assigns the messuage &c. To hold the same unto and to the use of the said (*M.*) his heirs and assigns for ever Subject to the proviso for redemption on payment &c.*"

of five hundred years from thence next ensuing *Subject* nevertheless to a proviso for the redemption of the said hereditaments and premises [or "for making void the same term"] on payment by the said (V.) or M. his wife or either of them their heirs &c. unto the said (M.) his executors &c. of the said sum of £

and interest as therein is mentioned *And whereas* [recite contract for purchase] And upon the treaty for the said purchase it was agreed that the said sum of £ due and owing to the said

(M.) upon or by virtue of the said recited security should be paid to him the said (M.) by and out of the said purchase money

Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the sum of £ of lawful

money of Great Britain (part of the said sum of £ the aforesaid purchase money) by the said (P.) at the request and

by the direction of the said (V.) testified by his being a party to and executing these presents to the said (M.) in hand paid at

or before the sealing and delivery of these presents in full for all principal and interest monies due and owing to the said (M.)

upon or by virtue of his said recited security the receipt of which said sum of £ the said (M.) Doth hereby ac-

knowledge And from the same and every part thereof doth acquit release and discharge the said (V.) and (P.) and each of

them their and each of their heirs executors administrators and assigns and every of them for ever by these presents And in

consideration of the sum of £ of like lawful money (residue of the said sum of £) by the said (P.) to the

said (V.) in like manner paid the payment and receipt of which said sums of £ and £ making together the sum of

£ the said (V.) doth hereby admit and acknowledge and from the same and every part thereof doth acquit release and

discharge the said (P.) his heirs executors administrators and assigns and every of them for ever by these presents He the

said (V.) and M. his wife (a) do and each of them doth by

No. DXXXIV.
*Freeholds by
Husband and
Wife.*

Contract for
purchase.

Testatum.

(a) They the said A. and B. his wife and C. and D. his wife according to their several and respective parts shares and proportions estates rights and interests in the premises and as to the said B. to the intent absolutely to release and extinguish all dower right and title to dower to which she is or may become entitled out of or upon the hereditaments and premises intended to be hereby conveyed and assured or any part or share thereof Do and each and every of them Doth (and as to the said B. and D. with the consent of their respective husbands testified by their being respectively parties to and executing these presents) by these presents which are intended to be produced

Conveyance by
two married
women to con-
vey, one to bar
dower, and the
other to pass
her share in the
estate.

No. DXXXIV. these presents intended to be forthwith duly acknowledged by the said (*M.*) and perfected in other respects with the solemnities prescribed by law for rendering deeds of married women effectual to pass their interests in land grant alien dispose of and confirm and the said (*M.*) in order to merge the said term of 500 years and release the said hereditaments from the said sum of £ and interest and all claims and demands on account thereof Doth by these presents bargain sell and assign and also surrender release and quit claim unto the said (*P.*) and his heirs *All* [*parcels*] and all [*general words*, see *ante*, p. 1259] *To have and to hold* the said &c. unto the said (*P.*) his heirs and assigns [*To uses to bar dower*, see *ante*, p. 1262; *Covenant by mortgagee against incumbrances*, *post*, p. 1273; *Covenants by husband that the husband and wife have right to convey*, &c., see *ante*, pp. 1265, 1266] *In witness* &c.

Habendum.
Covenants.

No. DXXXV.

No. DXXXV.
From Trustees. Conveyance from Trustees under a Marriage Settlement, in Pursuance of a Power of Revocation reserved therein, to a Purchaser (a).

Recital of settlement containing power of sale and revocation.

This Indenture made &c. *Between* (*Trustees donees of the power*) of the first part (*Tenant for life of the estate and his wife*) of the second part and (*Purchaser*) of the third part *Whereas* by indentures of lease and release bearing date respectively the and the days of the release being made or expressed to be made between &c. [*or* “between (*intended husband*) of &c. of the first part the said (*intended wife*) his now wife but then (*maiden name*) spinster &c. of the second part and the said (*T.*) of the third part”] being the settlement made by the said (*I. W.*) in contemplation of the marriage then intended and shortly afterwards had and solemnized between her and the said (*I. H.*) for the valuable considerations therein expressed (among other hereditaments) the lands and hereditaments hereinafter particularly described and intended to be hereby conveyed were

and acknowledged by each of them the said B. and D. as her act and deed and to be otherwise perfected in manner required by law with respect to the deeds and assurances for passing and extinguishing the interests of married women in real estate grant release dispose of and confirm unto the said (*P.*) and his heirs for ever.

(a) See No. CCCCXIX., *ante*, pp. 961—964.

limited and assured unto the said (*T.*) their heirs and assigns from and after the solemnization of the said then intended marriage to the use of the said (*H.*) and his assigns during the term of his natural life with divers remainders over And it was thereby provided agreed and declared [*The power of sale is recited verbatim, whereby the trustees at the request and with the consent of the said (H.) and (W.) during their joint lives, to be signified by writing under their hands and seals, were authorized to sell. And for that purpose power for the trustees with such consent and approbation as aforesaid by any deed sealed and delivered by them or him in the presence of and attested by two or more credible witnesses absolutely to revoke, determine and make void all and every or any of the uses &c. of the settlement, and by the same or any other deed to limit, declare and appoint any new use or uses, estate or estates, trust or trusts concerning the said hereditaments so sold as should be necessary. The usual declaration that receipts of the trustees should be sufficient discharges.*] And whereas the said (*T.*) pursuant to the said power given them by the before in part recited indenture in that behalf have at the request and with the consent of the said (*H.*) and (*W.*) his wife testified as hereinafter is mentioned contracted and agreed with the said (*P.*) for the absolute sale to him of the fee simple and inheritance free from incumbrances of the lands tenements and hereditaments hereinafter described at and for the price or sum of £

Now this Indenture witnesseth That in pursuance of the said recited contract and for and in consideration of the sum of £ to the said (*T.*) in hand &c. by the said (*P.*) at &c. the receipt of which said sum of £ in full for the absolute purchase of the lands and other hereditaments hereinafter described and intended to be hereby appointed the said (*T.*) do hereby admit and acknowledge and from the same sum and every part thereof they the said (*T.*) do and each of them doth acquit release and discharge the said (*P.*) his heirs executors administrators and assigns for ever by these presents and pursuant to and by force and virtue and in exercise of the power or authority to the said (*T.*) for this purpose given by the hereinbefore in part recited indenture of settlement and of every other power and authority enabling them in this behalf They the said (*T.*) at the request and by the direction of the said (*H.*) and (*W.*) his wife testified by their signing sealing and delivering these presents *Do* by this present deed or instrument in writing by them the said (*T.*) signed sealed and delivered in the presence of and attested by

No. DXXXV.
From Trustees.

Contract for
sale by trustees.

Testatum.

Revocation of
the uses.

No. DXXXV. the two credible witnesses whose names are intended to be here-
From Trustees. upon indorsed as witnesses attesting the signing sealing and de-

livering of these presents by the said (T.) absolutely revoke
determine and make void all and singular the uses trusts
estates powers provisoes and limitations in and by the said
hereinbefore recited indenture of settlement limited declared
and expressed of or concerning the said lands and other here-
ditaments hereinafter described and intended to be hereby ap-
pointed or every of them And the said (T.) pursuant to and in
further exercise and execution of the power and authority given
to or vested in them the said (T.) by the said hereinbefore in
part recited indenture of settlement and of every other power
and authority enabling them in this behalf do by this deed so
signed sealed and delivered and attested as aforesaid and with
the consent and approbation and by the direction and appoint-
ment of the said (H.) and (W.) his wife testified as aforesaid

Appointment.

Do and each of them *Doth* hereby limit declare direct and
appoint that *All* (parcels) and *All* [general words (but without the
words "All the estate &c.")] shall from henceforth go remain
and be To the use of the said (P.) his heirs and assigns for ever
[Where a power of sale of the above description is exercised with
the consent of the tenant for life, it is usual and advisable that he
should grant and release; where the trustees take no estate what-
ever it is useless to make them join in the grant] And this Indenture

Tenant for life
grants and
confirms.

further witnesseth That for the considerations hereinbefore ex-
pressed and by way of further assurance the said (Tenant for
life) at the request and by the direction and appointment of the
said (Trustees) testified by their severally executing these presents
Doth hereby grant release and confirm unto the said (P.) and
his heirs *All* and every the lands and other hereditaments
hereinbefore described and appointed or intended so to be with
their and every of their rights and appurtenances and all the estate
&c. of (the grantor) [*Habendum to purchaser in fee*] And each of
them the said (T.) severally separately and apart from each other
and so far only as relates to his own acts deeds and defaults but
not further or otherwise *Doth* hereby for himself his heirs
executors and administrators covenant with the said (P.) his
heirs and assigns that they the said (T.) respectively have not
nor hath either of them at any time heretofore made sale of or
agreed to sell all or any part or parts of the said lands
and hereditaments hereby appointed or intended so to be under
or by virtue of the aforesaid power of sale so given or reserved to

Covenant
against incum-
brances.

them as aforesaid or otherwise and that they respectively have not nor hath either of them at any time or times heretofore made done committed or executed or knowingly or willingly permitted or suffered or been parties or party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof they are in anywise prevented or hindered from making such sale as hereinbefore is mentioned or from exercising the power of revocation and appointment hereinbefore expressed to be exercised by them or whereby or by reason or means whereof the said lands and other hereditaments hereby appointed or intended so to be or any of them or any part thereof are is can shall or may be impeached charged affected or incumbered in title estate or otherwise howsoever [*In a case of this kind it is usual for the tenant for life in possession to enter into the usual covenants for title against his own acts and the acts of the settlor. See Re London Bridge Acts, 13 Sim. 176, 179. The following proviso, to be inserted after the covenants for title, has been framed by Mr. Dart, and is inserted in 2 Davidson's Conv. p. 195, 2nd ed.*] *Provided always* That as respects the reversion or remainder expectant on the life estate of the said (*tenant for life*) of and in the said premises and the title to and further assurance of the said premises after his decease his covenants hereinbefore contained shall not extend to the acts deeds or defaults of any person or persons other than or besides himself and his own heirs and persons claiming or to claim through or in trust for him them or some of them *In witness &c.*

No. DXXXV.
From Trustees.

Proviso restricting liability of tenant for life under covenants.

No. DXXXVI.

Conveyance from Trustees under a Will to a Purchaser.

This Indenture made &c. Between (*trustees*) trustees named in the will of A. B. late of &c. deceased of the first part (*widow*) of &c. relict of the said A. B. of the second part and (*purchaser*) of &c. of the third part *Whereas* the said A. B. being at the date of his will hereinafter recited and at the time of his decease seised of or otherwise well entitled to the hereditaments herein-after granted or intended so to be duly made and signed his last will and testament in writing and did thereby give and devise unto the said (*T.*) *All* his freehold messuages dwelling houses tenements closes lands and hereditaments whatsoever

No. DXXXVI.

Freeholds by Trustees.

Recital of devise to trustees to sell.

No. DXXXVI. situate lying and being at aforesaid And also certain lease-
Freeholds by holds therein mentioned *And also* all his stock in trade and
Trustees. implements used therein and all other his personal estate and
 effects whatsoever and wheresoever not therein before by him
 given bequeathed and disposed of *To hold* the same unto the said
 (T.) their heirs executors administrators and assigns *In trust* as
 soon after his death as conveniently might be to sell and dispose
 of first the personal estate and afterwards of his freehold estate
 for the discharge of debts and legacies And the testator did
 thereby declare that on any sale or sales of his said estate or
 any part thereof the receipt or receipts of his said trustees and the
 survivor of them and the executors and administrators of such
 survivor should be a good and sufficient release and discharge
 for so much money as should be expressed therein to be re-
 ceived to any purchaser or purchasers of the said estate and
 effects or any part thereof And the said testator appointed
 the said (T.) the executors of his said will *And whereas* A. B.
 duly made and published a codicil to his said will which
 codicil bears date on or about the day of and thereby
 after giving certain pecuniary legacies to the several persons
 therein mentioned he did thereby further will order and declare
 that if his said wife should not be able to collect and get in the
 rents and profits of his estate as aforesaid with that facility
 which the trustees and executors of his said will might desire or
 if it should seem to his trustees and executors more beneficial
 and advantageous to her and his said children during their re-
 spective minorities to sell and dispose of his said freehold estate
 at any time before the said legacies mentioned in his said will
 should be paid off and discharged Then the said testator directed
 that they should sell and dispose of the same in such manner as
 should be deemed most advisable and for the best price or prices
 that could be gotten for the same and to place out the purchase
 money upon Government or real securities upon the trusts
 therein mentioned *And whereas* [*recital of the death of A. B.*
and probate of the will] *And whereas* the said legacy of £
 to the said testator's son A. B. and the said legacies of £
 bequeathed to each of the daughters M. and C. of the said tes-
 tator remain unpaid and the personal estate of the said testator
 is insufficient to pay his debts and the same legacies *And whereas*
 the said A. B. M. B. and C. B. the children of the said testator
 are still respectively infants under the age of twenty-one years
And whereas it appears to the said (T.) that it will be more

Of codicil to
will.

Of death, &c.
of testator.
Personal estate
insufficient to
pay legacies.

That children
are infants.

Trustees deter-
mine to sell.

beneficial to the said (*W.*) and the children of the said testator that the hereditaments hereinafter described being part of the said devised real estate should be sold *And whereas* the said (*T.*) in pursuance of the power for that purpose in them reposed by the said in part recited will and codicil and with the consent of the said (*W.*) testified by her being a party to and executing these presents have contracted with the said (*P.*) for the sale to him of the hereditaments hereinafter described and intended to be hereby granted at or for the price or sum of £ *Now* *this Indenture witnesseth* That in pursuance of the said in part recited contract and in consideration of the sum of £ to the said (*T.*) in &c. by the said (*P.*) at &c. the receipt whereof the said (*T.*) *Do* and each of them *Doth* hereby admit and acknowledge They the said (*T.*) with the consent of the said (*W.*) testified as aforesaid *Do* and each of them *Doth* grant and the said (*W.*) *Doth* remise release and quit claim unto the said (*P.*) and his heirs and assigns *All those messuages And all* [*general words, see ante, p. 1259*] *To have and to hold* the said &c. unto the said (*P.*) his heirs and assigns to the use of the said (*P.*) his heirs and assigns for ever *And* each of them the said (*T.*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*P.*) his heirs and assigns that they the said (*T.*) have not nor hath either of them at any time heretofore made done committed or executed or wittingly or willingly suffered any act deed matter or thing whatsoever whereby or by means whereof the said messuages or tenements lands hereditaments and premises hereby granted or intended so to be or any part thereof are or is or shall or may be in anywise impeached charged affected or incumbered in title charge estate or otherwise howsoever or whereby or by reason or means whereof the said (*T.*) are in anywise prevented or hindered from granting the same premises or any of them in manner aforesaid according to the true intent and meaning of these presents *In witness &c.*

No. DXXXVI.

*Freeholds by
Trustees.*Contract for
sale.

Testatum.

Covenant from
trustees that
they have not
incumbered.

No.
DXXXVII.

Freeholds by
several Vendors.

No. DXXXVII.

Conveyance by Two Vendors, Tenants in Common, to Two Purchasers, where a Part of the Purchase Money is secured by a Mortgage by Demise of the Premises (a).

Recitals.

This Indenture made &c. Between (vendor) of the first part and (purchasers) of the second part Whereas [recite will, whereby testator devised his messuages or tenements, lands and hereditaments unto his wife during her natural life, and after her decease to one or more or all of his sons as she should by her last will, &c. appoint; and in default of appointment, or as to so much as the same should not extend unto his said sons as tenants in common and not as joint tenants] And whereas [recite death of testator and probate of his will] And whereas the said (W.) departed this life on or about the day of last past without having made any appointment or disposition of the said messuages &c. by virtue of the power to her given by the said in part recited will And whereas [recite contract for purchase] And whereas upon the treaty for the said purchase it was agreed that the sum of £ part of the purchase money should be paid by the said (P.) to the said (V.) at the time of completing the said purchase and that the sum of £ the residue thereof with interest for the same in the meantime should be secured to be paid to the said (V.) in the manner hereinafter mentioned (b) Now this Indenture witnesseth That in consideration of the sum of £ part of the said

Testatum.

(a) It is to be observed, that it was formerly usual, where part of the purchase money was allowed to remain on mortgage, to secure it in the manner shown by the above precedent. It is not, however, to be recommended; the better and ordinary course at the present day is, to have a simple conveyance, treating the whole of the purchase money as paid, accompanied by a simple mortgage in fee, 2 Davidson's Conv. p. 313, n., 2nd ed.

Variations
where mort-
gagee advances
part of pur-
chase money.

(b) Where part of the purchase money is advanced by a stranger the following recital and operative part will be substituted for the above:—"And whereas the said (P.) in order to enable him to complete his said purchase hath requested the (mortgagee) to advance and lend him the sum of £ which the said (mortgagee) hath agreed to do on having the same with interest secured upon the said messuage land and other hereditaments hereinafter limited to the use of the said (mortgagee) his executors administrators and assigns during the term of years at the time and in the manner hereinafter mentioned" Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the sum of £ of lawful money of Great Britain (part of the said sum of £ the aforesaid purchase money) by

purchase money or sum of £ to the said (V.) by the said (P.) at &c. paid the receipt whereof they the said (V.) do and each of them doth acknowledge and of &c. the same and every part thereof do and each of them doth hereby acquit &c. the said (P.) and each of them and their and each of their heirs executors administrators and assigns *And also* for and in consideration of the sum of £ secured to be paid to the said (V.) with interest in manner hereinafter appearing they the said (V.) *Do* and each of them *Doth* hereby grant and convey unto the said (P.) their heirs and assigns *All those (parcels) [general words, see ante, p. 1259]* *To have and to hold* the said manors messuages &c. and every part and parcel of the same with their and every of their rights and appurtenances unto the said (P.) (a) and their &c. To the use of the said (V.) and each of them their and each of their executors &c. for and during and unto the full end and term of 500 years to commence and be computed from the day next before the day of the date of these presents and thenceforth next ensuing and fully to be complete and ended without impeachment of or for any manner of waste *Subject* nevertheless to the proviso or agreement for redemption hereinafter contained and from and after the end expiration or sooner determination of the said term of 500 years *And* in the meantime and subject thereto as to and concerning one undivided moiety or equal half part of the said

No.
DXXXVII.
*Freeholds by
several Vendors.*

Habendum.

the said (*mortgagee*) at the request and by the direction of the said (P.) testified by his being party to and executing these presents to the said (V.) in hand well and truly paid at or before the sealing and delivery of these presents the receipt of which said sum of £ the said (V.) doth hereby acknowledge and from the same and every part thereof the said (V.) and (P.) do and each of them doth acquit release and discharge the said (*mortgagee*) his heirs executors administrators and assigns and every of them for ever by these presents *And* in consideration of the sum of £ of like lawful money (residue of the said sum of £) the aforesaid purchase money by the said (P.) to the said (V.) in like manner paid the payment and receipt of which said sums of £ and £ making together the sum of £ the said (V.) doth hereby acknowledge and from the same and every part thereof doth acquit release and discharge the said (P.) his heirs executors administrators and assigns and every of them for ever by these presents He the said (V.) at the request and by the direction of the said (P.) and with the privity and approbation of the said (*mortgagee*) testified as aforesaid doth by these presents grant and confirm unto the said (P.) and his heirs.

(a) If it be a mortgage in fee to a stranger, say, "Unto the said (*mortgagee*) his heirs and assigns to the use of the said (*mortgagee*) his heirs and assigns for ever subject nevertheless &c. *Provided always &c.*" (as above.)

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several Vendors.*

messuages &c. hereby granted or intended so to be To the use of the said (*one purchaser*) his heirs and assigns for ever And as to and concerning the remaining equal half part or moiety of the said messuages &c. To the use of the said (*other purchaser*) his heirs and assigns for ever *Provided always* and it is hereby declared and agreed by and between the parties that if the said (*P.*) or either of them their or either of their heirs executors administrators or assigns do and shall well and truly pay or cause to be paid unto the said (*V.*) or either of them their or either of their executors administrators or assigns the sum &c. [see MORTGAGES, *ante*, p. 1132] Then and in that case the said (*V.*) or either of them their or either of their executors &c. shall and will at any time upon the request and at the costs and charges of the said (*P.*) their heirs administrators or assigns surrender or assign the said messuages &c. for all the residue that shall be to come and unexpired of the said term of years therein unto the said (*P.*) their heirs and assigns or as they shall in that behalf order or direct free from all incumbrances And each of them the said (*V.*) so far as relates to his own acts doth hereby covenant with the said (*P.*) their heirs and assigns in manner following (that is to say) That for and notwithstanding any act deed matter or thing whatsoever by them the said (*V.*) or either of them or the said the testator made done omitted or executed or knowingly suffered to the contrary They the said (*V.*) or one of them now have or hath in themselves or himself [*good right to convey, &c.* *The form of Covenants, ante*, pp. 1262, 1263, *is preferable in a case of this sort to those here indicated*] And that it shall and may be lawful to and for the said (*P.*) their heirs and assigns from time to time and at all times hereafter subject to and without prejudice to the term of 500 years hereinbefore granted or assured or intended so to be peaceably and quietly to have &c. without any lawful let &c. of from or by the said (*V.*) or either of them &c. (save and except as hereinafter is excepted) And that free and clear and freely and clearly and absolutely acquitted exonerated released and discharged or otherwise by the said (*V.*) their heirs executors or administrators well and sufficiently saved harmless and kept indemnified of from and against all and all manner of former or other gifts grants &c. and incumbrances whatsoever either already or to be hereafter had made &c. and done by them or either of them (save and except the said term of 500 years) And further that they the said (*V.*) and each of them their and each of their heirs and all other persons claim-

Covenants from
vendors.

ing &c. by &c. them or any of them shall &c. make &c. [*Acts for further assurance*] And the said (P.) for themselves jointly and severally and for their several and respective heirs executors and administrators do hereby covenant with and to the said (V.) and each of them their and each of their executors administrators and assigns That they the said (P.) or one of them their or one of their heirs executors and administrators shall and will &c. [*Covenant to pay mortgage money and interest, see MORTGAGES, ante, pp. 1159, 1160*] And also that it shall and may be lawful for the said (V.) and each of them their and each of their executors administrators and assigns from time to time and at all times after default shall be made in payment &c. peaceably and quietly to enter into &c. without any let &c. of from or by the said (P.) or either of them their or either of their heirs [*Covenants for quiet enjoyment, free from incumbrances, and for further assurance, in the same manner as if the vendors were strangers, see ante, pp. 1133, 1134*] (a) And it is hereby agreed and declared between and by the said (P.) that as between them the said (P.) and their respective heirs executors administrators and assigns the said mortgage debt of £ and interest shall be borne and paid by them the said (P.) and their respective heirs executors administrators and assigns in equal shares And further that they the said (P.) and their respective heirs and assigns will henceforth during the continuance of the said term of 500 years permit and suffer the said (V.) his heirs and assigns to retain all and singular the deeds muniments and evidences of title relating to the said premises comprised in the said term in the same manner and with the same powers and privileges concerning the same as if the said (V.) had continued to be and were then the legal owner of the freehold and inheritance of the same premises (b) *In witness &c.*

No.
DXXXVII.
*Freeholds by
several Vendors.*
Covenants from
purchasers.

(a) Where part of the purchase money is permitted to remain on mortgage, although the covenants from the vendor be limited, the vendee invariably enters into general unlimited covenants in the same manner as he would have done in the case of an independent mortgage, 2 Sugd. V. & P. 427, 10th ed.

(b) See 2 Davidson's Conv. p. 316, 2nd ed. ; *ante*, p. 1137, n.

No.
DXXXVIII.
*Freeholds for
Annuity.*

No. DXXXVIII.

*Conveyance by a Vendor to a Purchaser in Consideration of an
Annuity secured to the Vendor for Life (a).*

Recitals.

Contract for
purchase.

Habendum to
purchaser.

Upon trusts.

To the use of
trustee.

This Indenture made &c. Between (vender) of &c. of the first part (purchaser) of &c. of the second part and (trustee) of &c. of the third part Whereas the said (P.) hath contracted with the said (V.) for the absolute purchase of the fee simple and inheritance of the said messuage lands and hereditaments hereinafter described intended to be hereby conveyed in consideration of the annual sum or yearly rent-charge of £ to be limited and secured to the said (V.) during his life in the manner hereinafter appearing Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the annual sum or yearly rent-charge of £ hereinafter limited to the said (V.) and to be secured in manner hereinafter mentioned He the said (V.) Doth by these presents grant and convey unto the said (P.) All that messuage &c. and All &c. [general words and all the estate] To have and to hold unto the said (P.) and his heirs but nevertheless to the uses and for the intents and purposes hereinafter mentioned (that is to say) To the use and intent that the said (V.) shall and may have receive and take yearly and every year during the term of his natural life the one annuity or clear yearly sum of £ of lawful money of Great Britain to be issuing and payable out of the said messuage &c. and premises by four equal quarterly payments on the days hereinafter mentioned (that is to say) on the day of &c. in every year without any abatement &c. the first quarterly payment to be made &c. and a proportional part &c. [see ANNUITY, ante, p. 189] And to the further use and intent that &c. [powers of distress and entry, see ANNUITY, ante, pp. 189, 190] And subject to the said annuity and the powers and remedies for enforcing payment of the same To the use of the said A. B. his executors and administrators for the term of 99 years but upon the trusts and to and for the ends intents and purposes hereinafter declared or expressed of and concerning the same And from and after the expiration or sooner determination of the

(a) In transactions of this kind it may often be advisable to convey the estate to the purchaser absolutely, and for him, by a separate deed, to grant the annuity to the vendor, with the usual powers, trusts and covenant to secure the same.

said term and in the meantime subject thereto and charged with the said annual sum or yearly rent-charge of £ as aforesaid To the use of the said (P.) his heirs and assigns for ever And it is hereby agreed and declared between and by the said parties hereto that the said term of 99 years is hereby limited to the said (T.) his executors administrators and assigns upon the trusts and subject to the proviso hereinafter declared and contained (that is to say) *Upon trust* to permit and suffer the said (P.) his heirs and assigns to receive and retain the yearly rents and profits of the said hereditaments and premises to and for his and their own use and benefit until some default shall happen to be made in the payment of the said annuity and after default *Upon trust* (see *ante*, pp. 191, 192) And in case the rents and profits of the said premises shall be insufficient then in trust that he the said (T.) shall or may by mortgage sale or other disposition of &c. raise levy and pay so much of the said annuity &c. as shall be in arrear and after payment &c. [*to pay surplus to the purchaser*] And it is hereby expressly declared &c. [*Trustees' receipts to be sufficient discharges. Proviso for cesser of term on death of (V.) and performance of trusts, see ante, ANNUITY, p. 192*] And the said (V.) for himself &c. doth hereby covenant &c. [*Covenants by vendor for title, &c. see ante, pp. 1262, 1265*] And the said (P.) for himself &c. doth hereby covenant &c. [*Covenant by purchaser to pay annuity and also to insure and keep insured against fire, see ante, ANNUITY, p. 194 (a)*] In witness &c.

No.
DXXXVIII.
*Freeholds for
Annuity.*

Upon trusts.

Covenants from
vendor for title.

From purchaser
to pay, &c.

(a) See 18 & 19 Vict. c. 15, s. 12, by which any annuity or rent-charge for one or more life or lives, granted after 26th April, 1855, otherwise than by marriage settlement, will not affect purchasers until a memorandum of the deed of grant is left with the Senior Master of the Court of Common Pleas at Westminster.

CONVEYANCE OF COPYHOLDS.

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| <p>1. <i>How Copyholds may be conveyed.</i>
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 <i>Exceptions.</i>
 <i>1st. Between Lord and Tenant.</i>
 <i>2nd. Conveyance under a Power.</i>
 <i>3rd. Other Cases.</i>
 <i>4th. Equitable Estate.</i></p> <p>2. <i>Who may surrender.</i>
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 <i>Tenants.</i></p> <p>6. <i>How a Surrender may be made.</i>
 <i>In Person or by Attorney.</i></p> <p>7. <i>Other Requisites.</i>
 <i>Presentment.</i></p> <p>8. <i>Admittance, &c.</i></p> <p>9. <i>Stamp Duty.</i></p> |
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How copyholds
may be con-
veyed.

By surrender.

Exceptions.

Between lord
and tenant.

Conveyance
under a power.

SECT. 1. Copyholders are still so far considered as mere tenants at will, that they cannot alien their estates by feoffment, or other assurance at common law; but they may transfer them, by surrendering or yielding them up to the lord of the manor in trust to be again granted to such person and for such uses as are mentioned in the surrender, for there can be no substitution of a person into the tenancy but by a surrender. So an exchange between two copyholders can only be effected by their surrendering to the use of each other. But this rule admits of some exceptions; first, for as between the lord and the tenant the conveyance need not be according to the custom; yet it seems doubtful whether a copyhold can be surrendered to the lord by mere implication of law.

In the next place, where a copyholder has surrendered to the use of his will, and given a power to sell, the person exercising it may convey the copyhold by bargain and sale, or any other common law assurance, and the vendee or appointee shall be in by the original instrument, without any new surrender to his use, *Holder v. Preston*, 2 Wils. 400, see *ante*, p. 450; so by the Bankrupt Act, 12 & 13 Viet. c. 106, s. 209, the Court of Bankruptcy including any commissioner thereof, are empowered to sell the copyhold estates of the bankrupt by deed indented and inrolled in the court of the manor whereof the lands are holden; and by 3 & 4 Will. 4, c. 74, s. 56, they were em-

powered to sell the estates of a bankrupt tenant in tail under the provisions of that act. The provisions of the last act are extended to proceedings under the Bankrupt Law Consolidation Act, 1849, 12 & 13 Vict. c. 106, s. 208. The assignees of insolvent debtors can convey copyholds, 1 & 2 Vict. c. 110, ss. 45, 47.

Copyholds.

So in the third place, there are some other cases where a deed will be effectual to convey the legal estate, as where a person who has a mere right or title releases to one who is in possession and has obtained admission. So one joint tenant may release or surrender to another, which will operate as a severance of the joint tenancy. Whether a surrender to the use of a will operates as a severance of the joint tenancy, see *Edwards v. Champion*, 1 De G. & S. 75; 3 De G., M. & G. 202; Shelford on Copyholds, p. 465.

Other cases.

In the fourth place, this rule is confined to the conveyance of the legal estate, for an equitable estate in copyholds may be conveyed by deed; and as to the equitable estate of tenants in tail, this is confirmed by the 3 & 4 Will. 4, c. 74, s. 53. As to the disposition of copyholds by tenants in tail, see *ante*, pp. 911, 928–935. In every case of a husband or wife surrendering copyholds in which she alone, or she and her husband in her right, have an equitable estate, the wife is to be separately examined in the same manner as if she had a legal estate, in which case the surrender will be binding on the wife, and all persons claiming under her, 3 & 4 Will. 4, c. 74, s. 90. See Shelford's Real Prop. Stat. p. 404, 6th ed.

Equitable estate.

2. Every person capable of conveying an estate may make a surrender of a copyhold. An infant is not bound by his surrender, except by special custom; but such a surrender is not absolutely void, only voidable. Copyholds vested in an infant trustee may be conveyed by an order of the Court of Chancery under the Trustee Act, 1850, see 13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55.

Who may surrender.
Infant.

Husband and wife may together surrender the wife's lands, she being on such surrender examined apart by the steward, or by any person whom the steward may depute; and if the husband be present at the surrender, it shall be sufficient proof of his assent; a special custom for a married woman to surrender alone with the assent of her husband is good, but a custom for her to surrender without the assent of her husband is void. So the committee of a lunatic trustee may convey a copyhold estate under the Trustee Act, 1850, see also 16 & 17 Vict. c. 70, s. 138. See *post*, p. 1292, n.

Husband and wife.

Committee of lunatic trustee.

3. A husband may surrender to the use of his wife, and where the wife is able to make a surrender, she may surrender to her husband, for the conveyance is through the intervention of the lord; and a surrender of copyhold premises made by a married woman to her husband, in his presence and with his assent, testified by his immediate admittance under it, she having been first solely and secretly

To whose use the surrender may be made.
Husband and wife.

- Copyholds.* examined by the steward, has been held valid. Under a surrender to husband and wife, remainder to their heirs, they take by entirety, and the husband alone cannot convey. So one joint tenant may surrender to the use of his companion, and the surrenderee will be in by his companion, and not by the original grant, the surrender operating as a severance of the joint tenancy, see *ante*, p. 1281.
- Joint tenant.**
- Steward.** So it has been held that there may be a surrender to a steward for the use of the steward, for the surrender is in truth to the lord.
- Surrender to future uses.** Surrenders of copyholds to future uses have in some cases been held valid, as where a copyholder in fee surrendered to the uses of a prior settlement, which contained a power to revoke the uses therein declared, and to limit new ones, it was held that the uses limited in execution of such power were good, although they had the effect of defeating prior vested estates, *Boddington v. Abernethy*, 5 B. & C. 776; 8 D. & R. 626; *Rex v. Lord of the Manor of Oundle*, 1 Ad. & Ell. 283. In *Flack v. Downing College, Cambridge*, 13 C. B. 945; 17 Jur. 697; 22 Law J., C. P. 229, the steward and the lords of the manor were held to be justified in refusing to enrol a surrender to uses on the ground that it would have the effect of depriving the lords of a fine. See *Eddleston v. Collins*, 3 De G., M. & G. 1; *Glass v. Richardson*, 9 Hare, 689; 2 De G., M. & G. 658. See Shelford on Copyholds, 107—109; 2 Davidson's Conv. 289, 290, 2nd ed.; *ante*, pp. 1168, 1173.
- Surrender to uses of will.** Although copyholds can now in general be devised without any surrender to the uses of a will, 7 Will. 4 & 1 Vict. c. 26, s. 3, still where a married woman is seised in fee of copyholds and desires to have the power of disposing of them by will, it is necessary that she and her husband should surrender them to such uses as she shall by her will appoint.
- What may be surrendered, or otherwise.** 4. Nothing is the proper subject of a surrender but the legal estate; but it need not be in possession, for a remainderman or reversioner may surrender his estate, if there be no custom to the contrary, and he need not be admitted, for the admittance of the tenant for life is the admittance of him in remainder or reversion, see Shelford on Copyholds, 103, 104; *Smith v. Glasscock*, 27 Law J., C. P. 192; yet a contingent remainder is not the subject of a surrender, because no party can make a surrender who is not in the seisin, and no person can surrender a copyhold until he is himself admitted, unless in the case of trustees selling under a power, *ante*, p. 450, *Obs.* So there can be no surrender of a right or equity only, although it may be assigned or devised, see 7 Will. 4 & 1 Vict. c. 26, s. 3. So a possibility cannot be surrendered; therefore a surrender by the heir in the lifetime of the ancestor is void, and will not operate even as an estoppel, *Goodtitle v. Morse*, 3 T. R. 365. See Shelford's Real Prop. Stat. 333, 334, 6th ed. After the 1st October, 1845, a contingent, an executory and
- Remainder, &c.**
- Not contingent remainder, &c.**

a future interest, and a possibility coupled with an interest in any tenements or hereditaments of any tenure may be disposed of by deed, 8 & 9 Vict. c. 106, s. 6; see *post*, p. 1293. Copyholds.

5. A surrender may be made either to the lord of the manor, or his steward or his deputy, see *ante*, pp. 277, 908, 909. Who may take a surrender.

When made to the lord, it matters not whether he be lord by right or by wrong, for his acceptance of the surrender and admittance shall not be impeached on account of his title; for he is but the conduit pipe to pass the estate through him; and the surrenderee, when admitted, is in solely under him who made the surrender, and not by the lord, see Shelford on Copyholds, 18—25. The lord.

So if the surrender be made to the steward, the law does not look either to his capacity or the lawfulness of his authority, for his acts are merely ministerial; and on the same principle a surrender by a steward's deputy, or the appointee of such deputy, is good, see Shelford on Copyholds, 208—218. The steward, or deputy.

So a bailiff, beadle, or reeve of a manor may take a surrender, but with this difference, that such can only be taken in the manor court, unless by special custom; whereas a surrender by the lord, steward, or deputy may be taken, not only out of court, but out of the manor. Bailiff, &c.

So by a special custom a surrender may be taken by two tenants of the manor, or by one tenant; and the heir of a copyholder is a sufficient tenant for this purpose before his admittance, but not a copyholder after attainder, for he is then no longer a tenant. Tenants.

6. If a copyholder be of full age and capacity, a surrender made by attorney will be as good as if made in person, it being a thing incident to the common law; but executors and others empowered to sell the copyholds of their testator must surrender in person, and not by attorney; for they themselves possess but a delegated authority, which they cannot transfer; and where there is a special custom requisite to enable a copyholder to surrender personally, as to a bailiff or reeve, or to two customary tenants, there a special custom is also necessary to make a surrender by attorney valid, 1 Watk. Cop. 94, 4th ed. How a surrender may be made.
In person or by attorney.

A copyholder is not compellable to surrender by attorney; and a purchaser is not obliged to accept of such surrender, Sugd. V. & P. 692, 693, 11th ed.; see *ante*, p. 845, pl. 19.

Infants and others under disability may be attornies to surrender for others; but they cannot make attornies to surrender for themselves, for 11 Geo. 4 & 1 Will. 4, c. 65, s. 4, authorizes infants and *femes covert* to make attornies only for the purpose of being admitted. The Lunacy Regulation Act, 1853, contains provisions as to the admittance and payment of fines in respect of copyholds to which lunatics are entitled, 16 & 17 Vict. c. 70, ss. 108—112.

7. Besides the surrender, two other ceremonies were formerly Other requisites.

Copyholds.

requisite to complete the conveyance of a copyhold; "the one, a true presentment of the surrender in court by the same persons into whose hands the surrender was made; the other, is an admittance by the lord according to the effect and tenor both of the surrender and the presentment."

Presentment.

Presentment is a formal notification by the homage to the lord of the surrender made by the tenant, in order that the surrender might be accepted. After the 31st December, 1841, it is not essential in any case to the validity of the admission of any person, as tenant of any lands held of any manor by copy of court roll, or according to the custom of such manor, that a presentment be made by the homage assembled at the court for such manor of the surrender, will or other instrument or fact in pursuance or in consequence of which such admission shall have been granted, 4 & 5 Vict. c. 35, s. 90.

Admittance,
&c.

8. The surrender being presented by the jury or homage of the manor, the lord grants the land to the person therein named, and thereupon admits him tenant to the copyhold, and the admittance is entered on the court rolls of the manor. As to fines payable on admittance, see Shelford on Copyholds, 87—119, and Supplement thereto, 53—57. But if the surrender be taken out of court, and no immediate admission be made, the memorandum of the taking such surrender, signed by the surrenderor and the lord or steward taking it, should be produced or certified on admittance being requested at a future time. In the purchase of copyholds, it is usual either to enter into a covenant to surrender, which is followed by an actual surrender, or to make a previous surrender, which is the safer course, and immediately after, for the vendor to execute a deed of covenants.

Stamp.

9. In the conveyance of copyholds, the surrender or memorandum thereof, if made out of court, or the copy of court roll of the surrender, if made in court, will be deemed the principal instrument, and charged with the *ad valorem* stamp, *ante*, p. 883. See *BARGAINS AND SALES OF COPYHOLDS*, Nos. CCXX.—CCXXII., *ante*, pp. 448—458.



No. DXXXIX.

No. DXXXIX.

*Covenants to
Surrender.*

*Deed of Covenants to surrender Copyholds and for Title
to a Purchaser.*

Recital of con-
tract for sale.

This Indenture made the day of &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part
Whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of the customary or copyhold

hereditaments hereinafter described and covenanted to be sur- No. DXXXIX.
 rendered with their appurtenances for an estate of inheritance *Covenants to*
 in fee simple in possession according to the custom of the manor *Surrender.*
 of in the county of free from incumbrances as here-
 inafter mentioned at or for the price or sum of £ [or
Whereas the said (V.) is seised of or otherwise entitled unto Recitals of
 the messuage or tenement and hereditaments hereinafter de- seisin and con-
 scribed for an absolute estate of inheritance to him and his tract.
 heirs according to the custom of the manor of in the
 county of *And whereas* the said (P.) hath contracted with
 the said (V.) for the absolute purchase of the said copyhold
 lands at or for the price of £] *Now this Indenture wit-* Testatum.
neseth That for and in consideration of the sum of £
 of lawful money &c. to the said A. B. in hand well and truly
 paid by the said C. D. at or before the sealing and delivery of
 these presents the receipt whereof the said A. B. doth hereby
 acknowledge and from the same and every part thereof doth
 acquit release and discharge the said C. D. his heirs executors
 administrators and assigns and every of them for ever by these
 presents (the *ad valorem* stamp in respect of which said purchase
 money is intended to be affixed to the surrender of the said
 hereditaments according to the provisions of the act of parlia-
 ment in that behalf) He the said A. B. for himself his heirs
 executors and administrators doth hereby covenant and agree Covenant by
 with the said C. D. his heirs and assigns that the said A. B. or vendor to sur-
 his heirs and all other necessary parties shall and will at the render.
 next or some subsequent general or at any special court baron
 or customary court to be holden for the manor of afore-
 said or out of court upon the request and at the costs and
 charges of the said C. D. his heirs or assigns duly surrender
 into the hands of the lord or lady lords or ladies of the said manor
 for the time being according to the custom of the same manor
All &c. with their and every of their appurtenances and the
 reversion and reversions remainder and remainders rents issues
 and profits thereof and all the estate right title interest property
 claim and demand whatsoever of the said A. B. in to or out of
 the same hereditaments and premises and every part thereof to
 the use of the said C. D. his heirs and assigns for ever or as he
 or they shall direct or require and according to the custom of
 the said manor and that in the meantime and until such sur-
 render shall be so made as aforesaid and the said C. D. his heirs
 or assigns shall procure admittance by virtue thereof He the said

No. DXXXIX. A. B. and his heirs shall and will stand and be seised and possessed of all and singular the same customary or copyhold hereditaments and premises in trust only for the said C. D. his heirs and assigns *And* the said A. B. for himself his heirs executors and administrators doth hereby further covenant with the said C. D. his heirs and assigns in manner following (that is to say) That notwithstanding any act deed matter or thing whatsoever by him the said A. B. or any of his ancestors at any time heretofore made done committed or executed or wittingly suffered to the contrary He the said A. B. now at the time of sealing and delivery of these presents is lawfully and rightfully seised of the said customary or copyhold lands hereditaments and premises hereinbefore covenanted to be surrendered with their appurtenances for a good sure perfect lawful absolute and indefeasible estate of inheritance in fee simple in possession according to the custom of the manor of aforesaid without any manner of condition trust or other restraint cause matter or thing whatsoever to alter change defeat revoke impeach make void or determine the same *And also* that he the said A. B. (notwithstanding any such act deed matter or thing as aforesaid) hath in himself good right full power and lawful and absolute authority to surrender and assure all and singular the said customary or copyhold lands hereditaments and premises hereinbefore covenanted to be surrendered with their appurtenances in manner expressed in and according to the true intent and meaning of the covenant in that behalf hereinbefore contained *And moreover* that it shall and may be lawful for the said C. D. his heirs and assigns from time to time and at all times for ever hereafter peaceably and quietly to enter into and upon have hold occupy possess and enjoy all and singular the same customary or copyhold hereditaments and premises with their appurtenances and to receive and take the rents issues and profits thereof to and for his and their own use and benefit without any lawful let suit trouble molestation eviction ejection interruption or disturbance whatsoever of from or by the said A. B. or his heirs or of from or by any other person or persons whomsoever lawfully or equitably and rightfully claiming or to claim by from under or in trust for him or them or by from or under any of his ancestors *And* that free and clear and freely and clearly and absolutely acquitted exonerated and discharged or otherwise by the said A. B. his heirs executors and administrators well and effectually saved defended kept harmless and indemnified of from and

*Covenants to
Surrender.*

Covenants by
vendor.

Seised in fee.

Good right to
surrender.

For quiet en-
joyment.

Free from in-
cumbrances.

against all and all manner of former and other surrenders gifts bargains sales leases mortgages jointures settlements dowers free-bench annuities trusts wills entails forfeitures escheats and all and singular other estates titles troubles charges and incumbrances whatsoever had made done committed executed occasioned or suffered by him the said A. B. or any of his ancestors or by any person or persons whomsoever lawfully or equitably claiming by from under or in trust for him them or any of them or by with or under his their or any of their acts means default privity consent or procurement (except only the customary rents fines duties and services payable and to be performed in respect of the same hereditaments and premises to the lord or lady lords or ladies of the manor of aforesaid for the time being) *And further* that he the said A. B. and his heirs and all and every other persons and person having or lawfully or equitably claiming or to claim any estate right title or interest in to or out of the said customary or copyhold hereditaments and premises or any part thereof by from under or in trust for him or them or any of his ancestors shall and will from time to time and at all times for ever hereafter upon the reasonable request and at the proper costs and charges in the law of the said C. D. his heirs or assigns make do and execute or cause and procure to be made done and executed all and every such further and other acts deeds surrenders conveyances and assurances in the law whatsoever for the further better more perfectly and absolutely surrendering conveying assuring and confirming all and singular the said customary or copyhold lands hereditaments and premises hereinbefore covenanted to be surrendered with their appurtenances to the use of the said C. D. his heirs and assigns for ever or as he or they shall direct or appoint and according to the custom of the manor of aforesaid as by the said C. D. his heirs or assigns or his or their counsel in the law shall be lawfully and reasonably devised or advised and required and be tendered to be made done and executed *In witness &c.*

No. DXXXIX.

*Covenants to
Surrender.*

Further assurance.



No. DXL.

Freeholds and
Copyholds.

No. DXL.

*Grant of Freeholds and Covenant to surrender Copyholds to a
Purchaser.*Recitals of
seisin in fee
and contract
for sale.Apportionment
of considera-
tion.Conveyance of
freeholds.

*This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said A. B. hath lately contracted and agreed with the said C. D. for the sale to him of the freehold messuages lands and hereditaments hereinafter described and intended to be hereby granted with their appurtenances for an estate of inheritance in fee simple in possession And also of the customary or copyhold lands and hereditaments hereinafter also described and covenanted to be surrendered with their appurtenances for a like estate of inheritance according to the custom of the manor of in the county of and respectively free from incumbrances except as hereinafter mentioned at or for the price or sum of £ And whereas for the purpose of complying with the provisions of the act of parliament imposing an *ad valorem* duty on all conveyances of estates it has been agreed that the sum of £ shall be considered as the consideration money for the purchase of the said freehold hereditaments and the sum of £ as the consideration money for the purchase of the said customary or copyhold hereditaments and that the *ad valorem* stamp in respect of the last-mentioned hereditaments shall be affixed to the surrender thereof Now this Indenture witnesseth That in pursuance and performance of the said recited contract and agreement and for and in consideration of the sum of £ of lawful money of Great Britain to the said A. B. in hand paid by the said C. D. at or before the sealing and delivery of these presents in full for the absolute purchase of the freehold hereditaments hereinafter described and intended to be hereby granted and the fee simple and inheritance thereof free from all incumbrances the receipt of which same sum the said A. B. doth hereby acknowledge and from the same and every part thereof doth acquit release and discharge the said C. D. his heirs executors administrators and assigns and every of them for ever by these presents He the said A. B. doth by these presents grant alien and confirm unto the said C. D. his heirs and assigns All such and so many and such part or parts as is or are freehold and not copyhold of and in All &c. (*parcels*) (see *ante*, p. 885)*

And of and in all houses (*ante*, p. 1259) and appurtenances whatsoever to the said freehold hereditaments and premises belonging or in anywise appertaining or therewith usually held occupied or enjoyed or accepted reputed deemed taken or known as part parcel or member thereof And the reversion and reversions remainder and remainders yearly and other rents issues and profits of all and singular the said messuages lands hereditaments and premises hereby granted or intended so to be And all the estate right title interest inheritance use trust property power claim and demand whatsoever both at law and in equity of the said A. B. in to or out of the same premises and every part thereof And all deeds evidences and writings in anywise relating to the same hereditaments and premises now in the custody or power of the said A. B. or which he can procure without suit at law or in equity *To have and to hold* the said messuages lands hereditaments and all and singular other the freehold premises hereinbefore granted or intended so to be with their appurtenances unto the said C. D. his heirs and assigns to the only proper use and behoof of the said C. D. his heirs and assigns for ever and to or for no other use intent or purpose whatsoever *And this Indenture also witnesseth (a)* That in pursuance and further performance of the said recited contract and also in consideration of the sum of £ of lawful money of Great Britain to the said A. B. paid by the said C. D. immediately before the execution of these presents in full for the absolute purchase of the copyhold hereditaments hereinafter mentioned and hereby covenanted to be surrendered and the customary inheritance thereof free from all incumbrances (except as hereinafter mentioned) the receipt &c. (see *ante*, p. 1288) the said A. B. for himself his heirs executors and administrators doth hereby covenant with the said C. D. his heirs and assigns that he the said A. B. or his heirs and all other persons rightfully claiming under or in trust for him or them shall and will at the next or some subsequent general or at any special court baron or customary court to be holden for the manor of afore-said or out of court upon the request and at the costs and charges of the said C. D. his heirs or assigns duly surrender into the hands of the lord or lady lords or ladies of the said manor for the time being and according to the custom thereof *All* such and so many and such part or parts as is or are of

No. DXL.
Freeholds and
Copyholds.

Covenant to
surrender copy-
holds.

(a) See *post*, pp. 1292, 1293, n.

No. DXL.
*Freeholds and
 Copyholds.*

copyhold and customary tenure and holden of the said manor by copy of court roll of and in the messuages lands and other hereditaments hereinbefore described with all and singular the appurtenances to the same copyhold premises belonging or appertaining And the reversion and reversions remainder and remainders rents issues and profits thereof And all the estate right title interest benefit power claim and demand whatsoever of the said A. B. in to or out of the same customary or copyhold hereditaments and premises and every part thereof to the use of the said C. D. his heirs and assigns for ever or as he or they shall direct or require and according to the custom of the manor of aforesaid And that in the meantime and until such surrender or surrenders shall be so made as aforesaid And the said C. D. his heirs or assigns shall obtain admittance by virtue thereof He the said A. B. and his heirs shall and will stand and be seised or possessed of the same customary or copyhold hereditaments and premises in trust only for the said C. D. his heirs and assigns And the said A. B. for himself his heirs executors and administrators doth further covenant promise grant and agree with and to the said C. D. his heirs and assigns by these presents in manner following (that is to say) (a) That he the said A. B. now at the time of the sealing and delivery of these presents is and standeth lawfully and rightfully seised of the said freehold messuages lands hereditaments and premises hereby granted or intended so to be and of every part thereof with their appurtenances for a good sure perfect lawful absolute and indefeasible estate of inheritance in fee simple in possession and of the said customary or copyhold lands hereditaments and premises hereinbefore covenanted to be surrendered for a like estate of inheritance according to the custom of the manor of aforesaid without any manner of condition trust power of revocation limitation of use or uses or any other restraint cause matter or thing whatsoever to alter change defeat revoke impeach make void or determine the same And also that he the said A. B. now hath in himself good right full power and lawful and absolute authority to grant surrender convey and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereby granted and released or intended so to be and here-

Absolute cove-
 nants by ven-
 dor.

Seised in fee.

Good right to
 convey.

(a) It will be observed, that the following covenants are absolute; when this is not intended, introduce the qualification "that notwithstanding &c." See *ante*, p. 1286.

inbefore covenanted to be surrendered with their appurtenances unto and to the use of the said C. D. his heirs and assigns for ever in manner aforesaid and according to the true intent and meaning of these presents *And moreover* that it shall and may be lawful for the said C. D. his heirs and assigns from time to time and at all times for ever hereafter peaceably and quietly to enter into and upon have hold occupy possess and enjoy all and singular the same freehold and customary or copyhold hereditaments and premises with their appurtenances and to receive and take the rents issues and profits thereof and of every part thereof respectively to and for his and their own use and benefit without any lawful let suit trouble molestation eviction ejection interruption or disturbance whatsoever of from or by the said A. B. or his heirs or any other person or persons whomsoever lawfully or equitably and rightfully claiming or to claim any estate right title trust or interest in to or out of the same premises or any part thereof respectively *And* that free and clear and freely and clearly and absolutely acquitted exonerated and discharged or otherwise by the said A. B. his heirs executors and administrators well and effectually saved defended kept harmless indemnified of from and against all and all manner of former and other gifts grants bargains sales leases mortgages jointures settlements dower free-bench annuities uses trusts wills entails statutes recognizances judgments extents executions forfeitures escheats and all and singular other estates titles troubles charges and incumbrances whatsoever (save and except the customary rents fines heriots duties and services payable and henceforth to be performed to the lord or lady lords or ladies of the manor of aforesaid for the time being for and in respect of the same customary or copyhold hereditaments and premises or any part thereof) *And further* that he the said A. B. and his heirs and all and every other persons and person having or lawfully or equitably claiming or to claim any estate right title trust or interest in to or out of the said hereditaments and premises hereby granted or intended so to be and hereinbefore covenanted to be surrendered or any part thereof respectively (except in respect of the estates and interests hereinbefore excepted) shall and will from time to time and at all times hereafter upon the request and at the proper costs and charges in the law of the said C. D. his heirs or assigns make do and execute or cause and procure to be made done and executed all and every such further and other acts deeds con-

No. DXL.

*Freeholds and
Copyholds.*

For quiet enjoyment.

Free from
incumbrances.Further
assurance.

No. DXL.
*Freeholds and
 Copyholds.*

veyances surrenders and assurances in the law whatsoever for the further better more perfectly and absolutely granting releasing conveying surrendering assuring and confirming all and singular the said freehold and customary or copyhold messuages lands hereditaments and premises hereby granted or intended so to be and hereinbefore covenanted to be surrendered with their appurtenances to the use of the said C. D. his heirs and assigns for ever as by the said C. D. his heirs or assigns or his or their counsel learned in the law shall be lawfully and reasonably devised or advised and required (a) *In witness &c.*

Variations in
 covenant to
 surrender
 where legal
 estate in copy-
 holds is vested
 in lunatic
 trustee.

(a) *And whereas* in pursuance of the covenant for that purpose contained in the said recited indenture of settlement the said copyhold hereditaments were duly surrendered to the use of the said (*trustees*) and their heirs upon the trusts declared of and concerning the same by the same indenture and the said (*trustees*) were duly admitted tenants to the said copyhold hereditaments accordingly *And whereas* on the death of the said (*trustee*) who survived his co-trustee the said the legal estate in the copyhold part of the aforesaid hereditaments held of the aforesaid manor of descended to the said (*lunatic*) as the heir according to the custom of the same manor of the said (*surviving trustee*) subject to the trusts of the said recited indenture of settlement *And whereas* inasmuch as the said (*lunatic*) is of unsound mind and therefore incapable of executing with effect any deed or other legal instrument it hath been agreed that the said (*lunatic*) shall be admitted tenant to the said last-mentioned copyhold hereditaments in order and to the intent that the same may be conveyed or surrendered by such person as the Lord Chancellor or the Lords Justices of the Court of Chancery intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of idiots lunatics and persons of unsound mind shall appoint for that purpose in the place of the said (*lunatic*) in pursuance of the powers contained in the Trustee Act 1850 *Now this Indenture further witnesseth* That for the considerations aforesaid each and every of them the said (*the parties beneficially interested*) so far as relates to his and her own acts and deeds doth hereby for himself and herself his and her heirs executors and administrators covenant and agree with the said (*purchaser*) his heirs and assigns That they the said (*covenantors*) shall and will at their or some or one of their own costs and charges forthwith cause and procure the said (*lunatic*) to be admitted tenant to all such part and parts of the messuage lands and hereditaments hereinbefore described as is or are copyhold and held of the aforesaid manor of To hold the same to the said (*lunatic*) and his heirs according to the custom of the same manor upon the trusts of the said indenture of settlement And that they the said (*covenantors*) shall and will forthwith at their or some or one of their own costs and charges either by an application by petition to the Lord Chancellor or the said Lords Justices under the authority of the said Trustee Act 1850 or by such other lawful and equitable ways and means as shall be effectual for that purpose obtain an order for the conveyance and surrender by some person in the name of the

No. DXLI.

No. DXLI.

*Contingent
Interest.*

*Deed of Disposition of a Contingent Interest in Copyholds under
8 & 9 Vict. c. 106, s. 6, to a Purchaser (a).*

This Indenture made &c. Between A. B. (vender) of &c. of the one part and C. D. (purchaser) of &c. of the other part Whereas [recite such facts as will show the vender's title to the interest disposed of] And whereas the said C. D. hath contracted and agreed with the said A. B. for the absolute purchase of the contingent interest of him the said A. B. in and to the said customary or copyhold hereditaments and premises hereinafter described and the inheritance thereof according to the custom of the said manor of free from incumbrances except the accustomed rents fines heriots duties and services payable and to be performed in respect thereof for the sum of £ Now this Indenture witnesseth That in pursuance of the said contract and agreement and in consideration of the sum of £ to the said A. B. in hand paid by the said C. D. at or before the sealing and delivery hereof the receipt of which said sum of £ the said A. B. doth hereby acknowledge and from the same doth release and for ever discharge the said C. D. his heirs executors administrators and assigns He the said A. B. in pursuance of the power contained in an act of parliament passed in the session held in the eighth and ninth years of the reign of

said (lunatic) of the said copyhold hereditaments and premises unto and to the use of the said (purchaser) his heirs and assigns To the intent that the said (purchaser) or his heirs may be admitted tenant or tenants of the said copyhold hereditaments to hold the same to him his heirs and assigns for ever at the will of the lord or lady of the said manor by copy of court roll according to the custom of the same manor by and under the rents suits and services therefore due and of right accustomed to be paid and performed And that in the meantime and until such surrender shall be made and the said (purchaser) or his heirs shall be admitted tenant or tenants under and by virtue of the same surrender he the said (lunatic) and his heirs and all other persons shall stand and be seised or possessed of the same copyhold lands and hereditaments and every part of the same with the appurtenances upon trust for and for the sole use and benefit of the said (purchaser) his heirs and assigns.

(a) See *ante*, p. 1282, pl. 4. Such variations in the following precedent, as circumstances may require, will readily suggest themselves. If the parties disposing are husband and wife claiming in her right, the deed must be acknowledged by her in the mode prescribed by the Act for the Abolition of Fines and Recoveries, see 2 Scriv. on Copyholds, p. 905, 4th ed.

No. DXLI.
*Contingent
Interest.*

her present Majesty intituled "An Act to amend the Law of Real Property" doth by this deed grant and dispose of unto the said C. D. his heirs and assigns *All* that the contingent interest of him the said A. B. in and to *All* [*parcels*] and in and to all the rights members and appurtenances to the said customary or copyhold hereditaments and premises belonging or in anywise appertaining And all the estate right title interest power claim and demand whatsoever of him the said A. B. in to or out of the same hereditaments and premises and every part thereof *To have and to hold* the said interest and other the premises hereby granted and disposed of or intended so to be with the appurtenances unto the said C. D. and his heirs *To the use* of the said C. D. his heirs and assigns for ever [*Covenants by A. B. that he has right to grant and dispose of the interest in question, free from incumbrances and for further assurance*] *In witness &c.*

Deed of Disposition by an equitable Tenant in Tail of Copyholds to a Purchaser, see ante, No. CCCXCIII., pp. 933—935.

No. DXLII.
*Leaseholds by
Executors.*

No. DXLII.

Assignments of Leasehold Property by Executors.

Obs. 1. An executor or administrator may sell a term, where there are debts, without the concurrence of the devisee, and a purchaser is not bound to see to the application of the purchase money, nor need there be any recital in the assignment of the purpose for which it is sold, *Bonney v. Lidgard*, 1 Cox Ca. 145; but if sold at an under-value, or the purchaser knew there were no debts, or that the debts were or could be paid, such a sale is held to be fraudulent against the persons interested in the premises under the will, *M'Leod v. Drummond*, 17 Ves. 158. To obviate all questions, it is prudent to obtain the concurrence of the devisee. Where an assignment is taken from the legatee of the term, the consent of the executor or other personal representative of the lessee is required to be testified by his concurrence in the deed of assignment, and by a confirmation of the same. To obviate the necessity of such concurrence it is advisable that a legatee of a term should have an express assignment from the executor or at

least an instrument declaring his assent to the legacy, 3 Prest. Abstr. 145. See CONDITIONS OF SALE, *ante*, pp. 626—628; Sugd. V. & P. Ch. XVII. s. 2. As to the power of an executor to assign or underlet where the lease restrains alienation without the lessor's license, see Wms. on Exors., Pt. III., B. I., Ch. I.

2. An executor, as such, is not bound to enter into a covenant, except that he has not incumbered; but the purchaser must covenant for indemnity against payment of the rent and performance of the covenants, although he cannot have a covenant for title, *Staines v. Morris*, 1 V. & B. 12. See *ante*, p. 388.

3. There can be no parol assignment of a lease, 29 Car. 2, c. 3, [see ASSIGNMENTS, *ante*, p. 388]. An assignment of a chattel interest, not being copyhold, in any tenements and hereditaments made after 1st October, 1845, is void at law unless made by deed, 8 & 9 Vict. c. 106, s. 2.

This Indenture made &c. Between (executors) of the first part (devisee) of &c. a devisee of the second part and (purchaser) of &c. of the third part Whereas [recite original lease] And whereas [recite assignment to the said A. B.] And whereas the said A. B. duly made and signed his last will and testament in writing bearing date &c. and thereby (inter alia) gave and bequeathed the said piece or parcel of ground messuage or tenement and premises so assigned to him as aforesaid unto the said (D.) his nephew And whereas [recite death of testator and probate of will] And whereas [recite contract for purchase] Now this Indenture witnesseth That in consideration of £ of lawful &c. to the said (E.) paid by the said (P.) at &c. the receipt whereof they the said (E.) Do and each of them Doth hereby acknowledge &c. they the said (E.) as such executors as aforesaid and so far as they respectively can or may at law or in equity but not further or otherwise and with the privity and approbation of the said (D.) testified &c. Do and each of them Doth by these presents assign And the said (D.) Doth by these presents assign and confirm unto the said (P.) his executors administrators and assigns All that piece &c. and all and singular other the premises comprised in the said in part recited indenture of And all the estate &c. of them the said (E.) and (D.) of in and to the said messuage &c. To have &c. unto the said (P.) henceforth for and during the remainder now to come and unexpired of the said term of years Subject nevertheless to the rent and covenants in the said in part recited indenture reserved and contained on the lessee's part to be paid done and observed And each of them

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*Leaseholds by
Executors.*No act to in-
cumber.

No. DXLII.
*Leaseholds by
 Executors.*

the said (*E.*) so far as relates to his own acts and deeds only and not further or otherwise *Doth* hereby for himself his executors &c. covenant &c. with the said (*P.*) his &c. [*that they have done no act to incumber, see ante, p. 405*] [*The devisee covenants with the purchaser that he has good right to assign for quiet enjoyment free from incumbrances and further assurances, see ante, pp. 390, 391*] *And* the said (*P.*) for himself &c. *Doth* [*covenant to pay rent, &c., ante, pp. 391, 392*] *In witness &c.*

Covenant from
 purchaser.



No. DXLIII.
Leaseholds.

*Conveyance of a Leasehold by a Mortgagee under a Power
 of Sale where the Mortgagor does not concur.*

Recitals.

Original lease.

*This Indenture made &c. Between (mortgagee) of &c. of the one part and (purchaser) of &c. of the other part Whereas by an indenture bearing date on or about the day of and made between W. H. therein described of the first part J. W. therein also described of the second part and F. I. therein also described of the third part For the valuable considerations therein expressed the said W. H. at the request and by the direction of the said J. W. did grant and demise and the said J. W. did ratify and confirm unto the said F. I. his executors administrators and assigns All that piece or parcel of ground situate and being in or near &c. in the parish of in the county of containing the several dimensions set forth in the ground plot or plan drawn in the margin of the said indenture now in recital Together with the newly-built messuage or tenement thereon To hold the same unto the said F. I. his executors administrators and assigns from the day of then last past for the term of 99 years to be computed from the day of 18 at the yearly rent of £ payable quarterly as therein mentioned And under and subject to the covenants provisoes and agreements therein contained and on the part of the said F. I. his executors administrators and assigns to be paid done observed and performed And whereas by an indenture of assignment bearing date &c. and made between the said F. I. of the one part and the said (*V.*) of the other part It was witnessed that in consideration of the sum of £ to the*

Mortgage by
 way of under-
 lease.

said F. I. paid by the said (V.) he the said F. I. did demise unto the said (V.) his executors administrators and assigns (*inter alia*) all the said piece and parcel of ground messuage or tenement and premises *To hold* the same unto the said (V.) his executors administrators and assigns thenceforth for all the then residue of the said term of 99 years except the last six days of the same term at the yearly rent of one peppercorn *Subject* to a proviso for redemption therein contained *And* it was by the said indenture now in recital further declared and agreed &c. [*power after default in payment of money, to sell without consent or concurrence of mortgagor, and declaration that receipts of mortgagee should be sufficient discharges*] *And whereas* no part of the said sum of £ or of the interest thereof hath ever been paid and the estate and interest of the said (M.) in the said premises is become absolute at law during the residue of the said term now to come and unexpired of the said term of 99 years wanting six days *And whereas* the said (V.) in pursuance of the power or authority given to or vested in him by the said hereinbefore in part recited indenture *Hath* contracted and agreed with the said (P.) for the sale to him of the said piece or parcel of ground messuage or tenement and premises comprised in the same indenture with the appurtenances for the residue of the said term now vested in him the said (V.) as aforesaid at or for the price of £ *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the sum of £ by the said (P.) to the said (V.) at &c. paid the receipt whereof he the said (V.) doth hereby acknowledge and from &c. he the said (V.) *Doth* by these presents assign unto the said (P.) his executors &c. *All that* &c. and the premises comprised in the said in part recited indenture of *And* all the estate &c. of him the said (V.) of in and to the said piece &c. hereby assigned or otherwise assured or intended so to be *To have and to hold* the said piece &c. and all and singular other the premises hereinbefore assigned &c. unto the said (P.) his executors administrators and assigns henceforth for and during all the residue and remainder now to come and unexpired of the said term vested in the said (V.) by the said hereinbefore in part recited indenture of *And* the said (V.) for himself his heirs executors and administrators *Doth* hereby covenant and declare with and to the said (P.) his executors &c. that he the said (V.) hath not at any time or times heretofore made done committed or executed or knowingly or willingly suffered or been party or privy

No. DXLIII.

Leaseholds.Mortgage
money due.Contract for
sale.No act to in-
cumber.

No. DXLIII. to any act deed matter or thing whatsoever whereby or by reason
Leaseholds. or means whereof the said piece or parcel of ground messuage
 or tenement and premises hereby assigned or intended so to be
 or any part or parts thereof are is can shall or may be in anywise
 impeached charged affected or incumbered in title term estate
 or otherwise howsoever or whereby &c. (see *ante*, p. 1273) *In*
witness &c.

—◆—

No. DXLIV.

No. DXLIV.

*Freeholds,
 Copyholds and
 Leaseholds.*

*Conveyance of Freeholds, Copyholds and Leaseholds, to a Pur-
 chaser, by Mortgagees for a Term, Devisees for Life and in
 Remainder, and Trustees for Sale.*

Recitals.

*This Indenture made &c. Between (mortgagees) of &c. of the
 first part (trustees) of &c. of the second part (devisees) of &c. of
 the third part and (purchasers) of &c. of the fourth part Whereas
 [recite conveyance of freeholds and grant of leaseholds to testator]
 And whereas [recite seisin of copyholds] And whereas [recite
 mortgage of freeholds and leaseholds by testator for a term of
 500 years] And whereas [recite will of the testator whereby he
 devised all his estates to trustees to sell] And whereas [recite
 death of testator and probate of the will] And whereas [recite
 that mortgage money was still due but that all interest was paid
 up to the day] And whereas [recite contract for purchase] And
 whereas (a) in order that a distinct consideration for the said
 freehold leasehold and copyhold hereditaments may be set forth
 in or upon the principal or only instrument of conveyance re-
 lating thereto respectively it is agreed by the parties to these
 presents and they have thought fit that the said purchase money
 or sum of £ shall be divided and apportioned in manner
 hereinafter mentioned (that is to say) the sum of £ as the
 price for the purchase of the freeholds the sum of £ as the
 price of the leaseholds and the sum of £ as the price
 of the copyhold hereditaments Now this Indenture witnesseth
 That in pursuance of the said contract and in consideration of
 the sum of £ being part of the said sum of £
 apportioned as the price for the purchase of the freehold heredi-*

Apportionment
 of purchase
 money.

(a) As to the apportionment of the consideration money, in respect to the
 duty, see *ante*, pp. 881, 883; *post*, No. DLI.

taments aforesaid in hand paid by the said (*P.*) at the request and by the direction of the said (*T.*) testified by their signing and sealing these presents to the said (*M.*) now paid in full for all principal monies and interest due to the said (*M.*) upon his said recited security the receipt of which said sum of £ the said (*M.*) *Doth* hereby acknowledge and from &c. (*ante*, p. 1267) *And also* in consideration of the sum of £ the remaining part of the said sum of £ so apportioned as last aforesaid to the said (*T.*) in &c. paid by the said (*P.*) the receipt &c. (see *ante*, p. 1267) They the said (*T.*) *Do* and each of them *Doth* grant and convey and the said (*M.*) to the intent that the said term of years granted to the said (*M.*) in and by the said in part recited indenture of may so far as the same concerns the hereditaments hereby granted and conveyed be merged or otherwise extinguished and to the intent that the same hereditaments may henceforth be freed and exonerated and discharged from the said sum of £ and interest secured to them as aforesaid *Do* and each of them *Doth* surrender and also release And the said (*D.*) *Do* and each of them *Doth* grant release and confirm unto the said (*P.*) his heirs and assigns *All those* &c. (*parcels*) And all houses &c. and the reversion &c. and all the estate &c. of them the said (*M.*) (*T.*) and (*D.*) of in to and out of the said messuages &c. *To have and to hold* the said messuages &c. unto the said (*P.*) his heirs and assigns for ever To the use of the said (*P.*) his heirs and assigns for ever *And this Indenture further witnesseth* That in further pursuance of the said agreement and in consideration of the sum of £ being the part of the said sum of £ apportioned as the price for the purchase of the said leasehold premises now paid by the said (*P.*) to the said (*T.*) the receipt &c. they the said (*M.*) at the request &c. of the said (*T.*) and (*D.*) testified as aforesaid *Do* and each of them by these presents *Doth* assign And the said (*T.*) and (*D.*) *Do* and each of them *Doth* hereby assign and confirm unto the said (*P.*) his executors administrators and assigns *All those* &c. comprised in and demised by the said in part recited indenture of lease [*or "assignment"*] of with their respective appurtenances And all the estate &c. *To have and to hold* the said messuages &c. And all and singular other the premises hereby assigned or intended so to be with their appurtenances unto the said (*P.*) his executors &c. for the residue now to come and unexpired of the said term of years *Subject* nevertheless to the

No. DXLIV.

*Freeholds,
Copyholds and
Leaseholds.*

Assignment of
leaseholds.

No. DXLIV.

Freeholds,
Copyholds and
Leaseholds.Covenant to
surrender
copyholds.

payment of the rent and performance of the covenants and agreements thereby reserved and contained and henceforth on the tenant's or lessee's part and behalf to be paid kept done and performed *And this Indenture further witnesseth* That in consideration of the sum of £ being the remaining part of the said sum of £ apportioned as the price or consideration for the purchase of the said copyhold premises hereinafter covenanted to be surrendered at the request and by the direction of the said (D.), testified as aforesaid to the said (T.) paid by the said (P.) at or before &c. the receipt whereof the said (T.) do hereby acknowledge &c. They the said (T.) for themselves and for their respective heirs executors and administrators do hereby covenant with the said (P.) his heirs and assigns That the said (T.) and all necessary parties shall and will forthwith as soon as conveniently may be at the request costs and charges of the said (P.) his executors administrators or assigns surrender or cause to be surrendered into the hands of the lord or lords lady or ladies for the time being of the said manor of according to the custom of the same manor *All that* &c. unto and to the use of the said (P.) his heirs and assigns for ever at the will of the lord according to the custom of the said manor by and under the rents suits and services therefore due and of right accustomed to be paid and performed And that in the meantime and until such surrender shall be made and the said (P.) or his heirs shall be admitted tenant or tenants under and by virtue of the same surrender he the said (P.) and his heirs and all other persons shall stand and be seised or possessed of the same copyhold lands and hereditaments and every part of the same with the appurtenances *Upon trust* for and for the sole benefit of the said (P.) his heirs and assigns And each of them the said (M.) and (T.) doth hereby for himself his heirs executors and administrators and so far as concerns his and their own acts deeds and defaults only covenant and declare with and to the said (P.) his heirs and assigns that they the said (M.) and (T.) have &c. [*done no act to incumber, ante*, p. 452] *And* the said (D.) for themselves severally and respectively and for their respective heirs executors and administrators do hereby covenant with the said (P.) his heirs executors administrators and assigns in manner following (that is to say) That for and notwithstanding any act deed matter or thing by them the said (D.) or the said the testator or any of them done executed omitted or knowingly or willingly suffered to the contrary the said recited indenture of lease of is a good

Covenant for
title.

sufficient valid and subsisting lease in the law not forfeited surrendered or in anywise rendered void or voidable *And* that notwithstanding any such act deed matter or thing as aforesaid they the said (*T.*) and (*D.*) or some or one of them now have or hath good right to grant and surrender the said freehold and copyhold premises respectively with their respective appurtenances unto the said (*P.*) his heirs and assigns and to assign the leasehold premises hereby assigned or intended so to be unto the said (*P.*) his executors administrators and assigns in manner aforesaid *And further* that it shall be lawful for the said (*P.*) his heirs executors administrators and assigns from time to time and at all times hereafter peaceably to enter into and upon and to hold and enjoy the said freehold and copyhold hereditaments and premises hereby granted and covenanted to be surrendered with the appurtenances *And also* from time to time during the continuance of the said term of years peaceably and quietly to enter upon the said leasehold hereditaments and premises hereby assigned or intended so to be and every part thereof and to receive and take the rents issues and profits of the same freehold copyhold and leasehold hereditaments and premises respectively and every part thereof for his and their own use and benefit without the lawful let suit interruption claim or demand of from or by the said (*T.*) or (*D.*) or any or either of them or of from or by any other person or persons lawfully or equitably claiming or to claim by from or under or in trust for him them or any or either of them or the said (*testator*) *And* that free and clear and freely clearly and absolutely acquitted and discharged or otherwise by the said (*D.*) or one of them their or his heirs executors or administrators &c. well and sufficiently saved harmless and kept indemnified of from and against all and all manner of &c. and incumbrances &c. save and except the rents fines and services henceforth to become due or to be performed in respect of the said copyhold hereditaments and premises to the lord &c. for the time being of the said manor of and also save and except the rents and covenants in the said indenture of lease reserved and contained and henceforth on the tenant's or lessee's part and behalf to be paid kept done and performed *And moreover* that they the said (*D.*) respectively and their respective heirs executors administrators and assigns and all and every other person or persons having or lawfully or equitably claiming any estate right title or interest of in to or out of the said freehold copyhold and leasehold hereditaments and premises respectively hereby granted

No. DXLIV.

*Freeholds,
Copyholds and
Leaseholds.*

Good right to
convey.

Quiet enjoy-
ment.

Further assur-
ance.

No. DXLIV.

Freeholds,
Copyholds and
Leaseholds.Covenant from
purchaser.

assigned and covenanted to be surrendered as aforesaid or any of them or any part thereof by from under or in trust for them or any or either of them or the said (*testator*) deceased shall and will from time to time and at all times hereafter upon every reasonable request and at the proper costs and charges of the said (*P.*) his heirs executors or administrators make do acknowledge and execute or cause or procure to be made done acknowledged and executed all and every such further and other lawful and reasonable acts deeds conveyances and assurances for the further better and more absolutely granting surrendering and assuring the said freehold and copyhold hereditaments and premises hereby granted and covenanted to be surrendered with their and every of their rights members and appurtenances unto the said (*P.*) his heirs and assigns *And* for the further better and more absolutely assigning or assuring the said leasehold hereditaments and premises hereinbefore assigned or intended so to be with their and every of their appurtenances unto the said (*P.*) his executors administrators and assigns during all the remainder which shall be then to come and unexpired of the said term of years (subject as aforesaid) or as the said (*P.*) his heirs executors administrators or assigns shall direct or appoint or as by him or them or his or their counsel in the law shall be reasonably advised or devised and required *And* he the said (*P.*) for himself his heirs &c. doth hereby covenant &c. with &c. the said (*D.*) that he the said (*P.*) his executors administrators and assigns shall and will at all times during the continuance of the said term of years pay the rent and observe and perform the covenants agreements and conditions in and by the said in part recited indenture of lease reserved and contained *And also* shall and will &c. [*indemnify the trustees, &c. ante, p. 392*] *In witness &c.*



No. DXLV.

Conveyance
under Decree
in Chancery.

No. DXLV.

*Conveyance of Freeholds in pursuance of a Decree of the
High Court of Chancery.*

This Indenture made &c. Between A. B. of &c. (*trustee for sale*) of the one part and C. D. of &c. (*purchaser*) of the other part *Whereas* [*recital of a will devising estate to trustee for sale, and death of testator and probate of his will*] *And whereas* by a decree of the High Court of Chancery made by the Vice-Chancellor

on the day of 185 in the matter of the estate of
 late of &c. the testator and in the cause wherein [*names*] were
 plaintiffs and the said A. B. was defendant *Upon* the applica-
 tion of the said (*plaintiffs*) the usual accounts and inquiries
 were directed to be taken and made for the purpose of adminis-
 tering under the direction of the said court the real and personal
 estate of the said testator And it was thereby among other
 things ordered That the said testator's real estate be sold And it
 was ordered That the purchase money to arise from the said sale
 of the said testator's real estate be paid into the Bank with the
 privity of the Accountant-General of the said Court of Chancery
 to be placed to the credit of the said cause subject to the
 further order of the said court *And whereas* the said real
 estate of the said testator was in pursuance of the said
 order with the approbation of the said Vice-Chancellor put up
 for sale by public auction on the day of last in six
 lots the messuage farm and hereditaments hereinafter described
 and intended to be hereby granted forming Lot 4 at the said sale
And at the said sale the said C. D. being the highest bidder
 was declared the purchaser of the said Lot 4 at the price of £600
And whereas it was a condition of the said sale that the timber
 on the said lot should be taken by the purchaser thereof at a
 valuation to be made as thereby provided and that the amount
 of such valuation should be paid in addition to the said purchase
 money *And whereas* the chief clerk of the said Vice-Chancellor
 by his certificate dated the day of last certified the
 result of the said sale and the said Vice-Chancellor signed his
 approval thereof on the day of last and thereby
 allowed the said C. D. to be the purchaser of the said heredita-
 ments forming the said Lot 4 at the price aforesaid And the
 said certificate was filed in the Court of Chancery on the
 day of last *And whereas* the timber growing on the said
 hereditaments forming the said Lot 4 has with the approbation
 of the said Vice-Chancellor been valued at the sum of £20 *And*
whereas by an order of the said court made by the said Vice-
 Chancellor on the day of last in the matter and cause
 aforesaid upon the application of the said C. D. the said C. D.
 by his solicitor declaring himself content with the title to the
 said property comprised in the said Lot 4 it was ordered that the
 said C. D. should on or before the day of instant
 pay the sum of £600 the amount of his purchase money and
 £20 the amount of the valuation of timber making together the
 sum of £620 into the Bank with the privity of the Accountant-

No. DXLV.

*Conveyance
under Decree
in Chancery.*Recital of
order for ad-
ministration
and sale of real
estate.Of sale by
auction in lots.Of condition of
sale as to
timber.Of chief clerk's
certificate.Of valuation of
timber.Of order for
payment of
purchase
money and
conveyance.

No. DXLV.

*Conveyance
under Decree
in Chancery.*Of payment of
purchase
money.Conveyance to
purchaser.

General of the said court to the credit of the said matter and cause *And it was ordered* That all proper parties should join in and execute a proper conveyance and assurance of the said property to the said C. D. or as he should direct *And whereas* in accordance with the said order the said C. D. paid the said sum of £620 into the Bank with the privity of the said Accountant-General to the credit of the said matter and cause on the day of instant *Now this Indenture witnesseth* That in pursuance of the said decree and order and in consideration of the said sum of £620 so paid by the said C. D. as aforesaid and of the premises He the said A. B. *Doth* hereby grant unto the said C. D. and his heirs *All &c.* [*parcels, general estate clause, Habendum to C. D. in fee, covenant by A. B. against incumbrances. See other Precedents.*] *In witness &c.*



No. DXLVI.

No. DXLVI.

*Equity of
Redemption
(Conveyance).**Conveyance of an Equity of Redemption.*

Obs. 1. The usual mode of conveying an equity of redemption is by grant, as if it was a legal estate.

2. In order to obviate questions which may arise between the real and personal representatives of the purchaser of an equity of redemption, it may, in many instances, be desirable to add a proviso declaratory of the intentions of the party. See 17 & 18 Vict. c. 113; *ante*, p. 1123.

Recitals.

Of money due
and contract.

Conveyance.

This Indenture made &c. Between (*venditor*) of &c. of the one part and (*purchaser*) of &c. of the other part *Whereas* [*recite mortgage*] *And whereas* there now remains due and owing to the said (*mortgagee*) upon and by virtue of the said in part recited mortgage security the said principal sum of £ and no more all interest for the same to the day of the date of these presents having been fully paid to the said (*M.*) *And whereas* the said (*V.*) hath contracted and agreed with the said (*P.*) for the absolute sale of the hereditaments hereinafter described and intended to be hereby granted and the inheritance thereof in fee simple in possession subject to the said indenture of mortgage and the principal monies and interest thereby secured but free from all other incumbrances at or for the price or sum of £ *Now this Indenture witnesseth* That in consideration of the sum of £ of lawful money of Great Britain due and owing to the said

(*M.*) on the said mortgage security as aforesaid and which is from henceforth to be deemed and taken as the proper debt of the said (*P.*) *And also* in consideration of the covenant of the said (*P.*) hereinafter contained for payment of the same sum and the interest thereon henceforth to become payable *And also* in consideration of the sum of £ of like lawful money to the said (*V.*) by the said (*P.*) at &c. paid the receipt whereof the said (*V.*) doth hereby acknowledge &c. he the said (*V.*) *Doth* hereby grant and convey unto the said (*P.*) and to his heirs &c. *All* &c. and *All* &c. [*general words, see ante, p. 1259*] And all the estate &c. *To have and to hold* the said messuage &c. unto and to the use of the said (*P.*) his heirs and assigns for ever *Subject* nevertheless to the said recited indenture of mortgage and to the payment of the sum of £ thereby secured and the interest henceforth to accrue and grow due for the same *And* the said (*V.*) for himself his heirs executors and administrators *Doth* hereby covenant with the said (*P.*) his heirs and assigns in manner following (that is to say) That for and notwithstanding any act deed matter or thing whatsoever by him the said (*V.*) made done committed or executed or knowingly suffered to the contrary he the said (*V.*) at the time of the execution of these presents subject to the said sum of £ and interest thereon *Hath* in himself good right full power and lawful and absolute authority to grant the said messuage &c. hereby granted or intended so to be unto the said (*P.*) his heirs and assigns for ever *And also* that notwithstanding any such act deed matter or thing as aforesaid he the said (*P.*) and his heirs and assigns shall and may peaceably and quietly have &c. the said premises hereby granted or intended so to be without the let suit hindrance and denial of the said (*V.*) his heirs or assigns or any other person &c. claiming or to claim by from or under him [save and except the said (*M.*) his heirs executors administrators and assigns in respect of the said mortgage and the interest thereof as aforesaid] *And* that free and clear and discharged from or otherwise by the said (*V.*) his heirs executors or administrators sufficiently indemnified against all estates incumbrances claims and demands other than the said recited mortgage created occasioned or made by the said (*V.*) or any person other than the said (*M.*) his heirs executors administrators or assigns in respect of the said mortgage lawfully or equitably claiming or to claim by from under or in trust for the said (*V.*) *And further* that he the said (*V.*) his heirs and assigns and all and every other person or persons who shall or may law-

No. DXLVI.

*Equity of
Redemption
(Conveyance).*

Habendum.

Covenants for
title.

Further as-
surance.

No. DXLVI.

*Equity of
Redemption
(Conveyance).*

Covenant by
purchaser to
pay mortgage,

and to indem-
nify vendor.

fully or equitably have or claim any estate right title or interest of in to or out of the said premises hereby granted or intended so to be with their appurtenances or any part thereof by from or under him or them [other than and except the said (*M.*) his heirs executors administrators and assigns in respect of the said mortgage debt and interest thereof as aforesaid] shall and will from time to time and at all times hereafter at the reasonable request and proper costs and charges of the said (*P.*) his heirs and assigns make do and execute or cause &c. *All* and every such further and other lawful and reasonable acts deeds things conveyances and assurances in the law whatsoever for the further better more perfectly and absolutely conveying and assuring all and singular the said premises hereby granted or intended so to be with the appurtenances unto and to the use of the said (*P.*) his heirs and assigns (subject to the said mortgage and interest thereof as aforesaid) as by the said (*P.*) his heirs and assigns or his or their counsel in the law shall be reasonably advised or devised and required *And* the said (*P.*) for himself his heirs executors administrators and assigns *Doth* hereby covenant with the said (*V.*) his heirs executors and administrators that he the said (*P.*) his heirs executors administrators or assigns or some or one of them shall and will well and truly pay or cause to be paid unto the said (*M.*) his executors administrators or assigns the said principal sum of £ hereinbefore mentioned to be secured and to be due and owing to the said (*M.*) upon or by virtue of the said in part recited indenture of mortgage and all interest from henceforth to grow due in respect thereof *And also* shall and will from time to time and at all times hereafter well and sufficiently save defend and keep harmless and indemnified the said (*V.*) his heirs executors and administrators and his and their lands tenements goods and chattels of from and against the said principal sum of £ and all interest from henceforth to grow due for or in respect of the same *And also* from and against all and all manner of actions suits and proceedings whatsoever which at any time or times shall be brought had commenced or prosecuted against the said (*V.*) his heirs executors or administrators *And also* all costs charges and damages which he or they shall or may bear pay sustain or be put unto for or by reason or on account of the said principal sum of £ or interest henceforth to become due in respect thereof or any part thereof or by reason or on account of the nonpayment of the same sum of £ and interest thereon or any part thereof respectively *In witness &c.*

RECITALS.

As to recitals, see *ante*, pp. 849—851. Various forms of recitals will be found in these precedents applicable to particular deeds. See the Precedents *passim*.

No. DXLVII.

*Of Testator's Seisin and Execution of Will and a Codicil,
and of Death.*

No. DXLVII.
*Execution of
Will and
Codicil.*

Whereas (testator) being at the date of his will hereinafter in part recited and thenceforth until his death seised of or otherwise well entitled to the messuages &c. hereinafter described or mentioned as to the freehold parts thereof for an estate of inheritance in fee simple and as to the copyhold parts thereof for an estate of inheritance according to the custom of the manor of Did make and sign his last will and testament in writing bearing date on or about the day of and executed and attested as by law required and thereby &c. *And whereas* the said (testator) duly made and signed a codicil to his said recited will which codicil bears date the day of 185 and is executed and attested as by law required and thereby &c. *And whereas* the said (testator) departed this life on or about the day of without having altered or revoked his said will otherwise than as the same was revoked or altered by the said recited codicil and without having revoked or altered such codicil and the same will and codicil were duly proved by on the day of in the Court of Probate Principal Registry [or "District Registry of "] *Whereas* the said (testator) departed this life on or about the day of without having revoked or altered his said will except so far as the same was revoked and altered by a certain codicil thereto which did not revoke or alter the residuary devise and bequest of the estate and effects of the said (testator) hereinbefore recited.

Of testator's
death.

No. DXLVIII.

Administration.

No. DXLVIII.

Recital of Administration.

Whereas (*intestate*) died in the month of now last past *in-*
testate and letters of administration of the estate and effects of the
said (*intestate*) were on the day of now last past granted
by the Court of Probate Principal Registry to And whereas
the said (*first administrator*) died on the day of in
the month of and letters of administration of the estate
and effects of the said (*intestate*) left unadministered by (*first*
administrator) were on the day of granted by &c.
to

No. DXLIX.

No. DXLIX.

*Agreement
(Partition).**Of Agreement for a Partition.*

And whereas the said (*copartners*) have agreed to make par-
tition of the said freehold and copyhold messuages &c. which
have descended to them as copartners upon the terms and in the
manner following [*here set out the shares of each*].

No. DL.

No. DL.

*Agreement
(Purchase).**Of Agreement for a Purchase.*

Whereas the said C. D. hath contracted and agreed with the
said A. B. for the absolute purchase of the messuages herein-
after described and the inheritance in fee simple in possession
thereof free from incumbrances for the price or sum of £
[*If leaseholds* for the absolute purchase of the said messuage
and premises with the appurtenances for the residue of the said
term of years granted by the said indenture of lease dis-
charged of all incumbrances at the price of £ or And
whereas the said (*vendor*) hath contracted and agreed with the said
(*purchaser*) for the sale to him of the lands and hereditaments
comprised in the said indenture of lease for the remainder now
to come of the said term of years free from incumbrances
except the rent covenants and agreements in the said indenture
contained and on the part of the lessee his executors adminis-
trators and assigns to be paid observed and performed at or
for the price or sum of £].

No. DLI.

Of Contract for Purchase of Freehold and Copyhold.

Whereas the said (*purchaser*) hath contracted and agreed with the said (*rendor*) for the purchase of the said freehold messuage &c. hereinafter described and intended to be hereby granted and the inheritance thereof in fee simple in possession free from incumbrances and also of the said customary or copyhold lands and other hereditaments hereinafter covenanted to be surrendered and the inheritance of the same according to the several customs of the manors whereof the same are holden free from incumbrances except the rents fines heriots and services payable or to be performed for or in respect of the same but free from all other incumbrances at or for the price or sum of £ *And* upon the treaty for the said purchase it was agreed that the sum of £ part of the said sum of £ should be the apportioned value of the said freehold hereditaments and that the sum of £ the further part of the said sum of £ should be the apportioned value of such of the said copyhold hereditaments as are holden of the said manor of P. and the sum of £ the residue of the said sum of £ the apportioned value of such of the said copyhold hereditaments as are holden of the said manor of G.

No. DLI.
*Of Freehold
and Copyhold.*

Apportionment
of considera-
tion.

No. DLII.

Of Sale by Auction by Trustees.

Whereas the said (*trustees*) in pursuance of the aforesaid trust for sale reposed in them by the said recited will of the said testator caused the hereditaments hereinafter described being part of the hereditaments so as aforesaid devised to the said (*T.*) to be put up to sale by public auction at on the day of 185 in two lots as described in a certain printed particulars of sale then and there produced at which sale the said (*purchaser*) became the purchaser of both the said lots comprising and consisting of the whole of the hereditaments hereinafter described and intended to be hereby granted at the price of £

No. DLII.
*Of Sale by
Auction by
Trustees.*

No. DLIII.

Of Sale by
Auction by
Mortgagee.

No. DLIII.

Of Sale by Auction by Mortgagee.

And whereas the said (*mortgagee*) in exercise of the power of sale given to him as hereinbefore recited caused the said hereditaments hereinafter mentioned to be put up to sale &c. (*as in* No. DLII.) at which sale the said (*purchaser*) was the highest bidder for and was declared the purchaser of lot one comprising the hereditaments intended to be hereby granted and immediately after the sale the said (*P.*) paid the sum of £ to or on account of the said (*M.*) by way of deposit and in part payment of his said purchase money of £



No. DLIV.

No. DLIV.

*Valuation.**Of Valuation of an Estate where Party had right of Pre-emption.*

And whereas the said (*purchaser*) having declared his option to purchase the said hereditaments at aforesaid comprised in the said recited will they the said (*P.*) and (*trustees*) for sale jointly appointed A. B. of &c. land surveyor to value the same and the said A. B. hath estimated the said estate subject to the quit rents payable thereout at the price or sum of £ which the said (*P.*) has accordingly agreed to pay for the purchase thereof.



No. DLV.

No. DLV.

*Conveyance.**Of Conveyance not having been executed to Purchaser.*

And whereas the said message and hereditaments so contracted to be purchased by the said (*purchaser*) as aforesaid not having been conveyed to the said (*P.*) or any person or persons in trust for him in his lifetime the said (*devisees of the said P.*) have applied to and requested the said (*vendor*) to execute a conveyance to them the said (*devisees*) and their heirs which the said (*V.*) have agreed to do in manner hereinafter appearing.



No. DLVI.

Of Grant of an Annuity.

No. DLVI.

Annuity.

Whereas by indenture bearing date &c. and made or expressed to be made between the said (*grantor*) of the first part the said (*annuitant*) of the second part and the said (*annuitant's trustee*) of the third part (a memorial whereof was duly inrolled in the High Court of Chancery) the said (*G.*) granted unto the said (*annuitant*) and his assigns for and during the term of his natural life one annuity or clear yearly rent-charge or sum of £ to be issuing and payable out of &c.

No. DLVII.

Of a Power of Appointment.

No. DLVII.

Appointment.

Whereas by indenture of grant bearing date on or about &c. and made or mentioned to be made between &c. and inrolled in the High Court of Chancery *All that* the manor or lordship of &c. with the rights members and appurtenances thereof and the messuages &c. and hereditaments thereto belonging hereinafter described were conveyed and assured and now stand limited and assured to the use of &c. [*set out the power*].

No. DLVIII.

Of Assignment of a Term.

No. DLVIII.

Assignment.

Whereas by indenture bearing date &c. and made between &c. *It is witnessed* that in consideration of the sum of £ to the said (*assignor*) paid by the said (*assignee*) he the said (*assignor*) *Did* bargain sell assign and set over unto the said (*assignee*) his executors &c. all the messuages &c. therein described for and during all the rest and residue of the term of years which were then to come and unexpired absolutely freed from all equity of redemption &c. (*as the case may be*).

No. DLIX.

*Bill of
Foreclosure.*

No. DLIX.

Of Bill of Foreclosure.

And whereas the said (*mortgagee*) did in Hilary Term in the year of the reign of her present Majesty exhibit his bill in her Majesty's High Court of Chancery against the said (*mortgagor*) in order to be paid principal and interest monies due on the said mortgage or in default thereof that the said (*mortgagor*) might stand absolutely foreclosed of and from all equity and right of redemption of and in the said mortgaged premises *And whereas* by a decree or decretal order of the said court made by Vice-Chancellor bearing date on or about the day of and made in the same cause *It was ordered* and decreed That the said (*mortgagor*) his executors administrators and assigns should stand absolutely debarred and foreclosed of and from all equity and right of redemption whatsoever of in or to the said mortgaged premises.



No. DLX.

Bond.

No. DLX.

Of a Bond.

Whereas by bond or obligation bearing date &c. under the hand and seal of (*obligor*) of &c. he became bound to the said (*obligee*) in the penalty of £ with a condition thereunder written for making void the same on the payment of £ on the day of next ensuing.



No. DLXI.

*Decree in
Chancery.*

No. DLXI.

Of a Decree in Chancery.

Whereas by a decree or decretal order of the High Court of Chancery made by Vice-Chancellor on the day of in the year in a certain cause then depending in the said court wherein the said E. F. was plaintiff and the said A. B. and others were defendants it was ordered among other things That what should be found due to the plaintiff for principal and interest and costs after deducting what he had received from the said A. B. on account of rents and profits as therein is mentioned should be raised by the sale of the premises comprised in the plaintiff's said mortgage or of a sufficient part thereof and that the same should be sold with the approbation of the said court. (See Recitals, *ante*, pp. 1302—1304.)

No. DLXII.

Of Approval of Deed by Judge.

No. DLXII.

*Approval of
Deed by Judge.*

Whereas by an order of the High Court of Chancery bearing date the day of 185 made by his Honor the Master of the Rolls [*or* “Vice-Chancellor ”] in a certain cause wherein A. B. and others are plaintiffs and C. D. and others are defendants it was ordered [*insert order directing deed to be settled and approved by the judge*] *And whereas* it appears by the certificate of the Chief Clerk of the said Master of the Rolls [*or* “Vice-Chancellor ”] dated the day of 185 that this indenture has been settled and approved by the said judge as a proper conveyance &c. [*as is ordered*] pursuant to the said order [See *ante*, other recitals in sale under decree in Chancery, pp. 1302—1304].

No. DLXIII.

Of Account of Principal and Interest.

No. DLXIII.

Account Settled.

Whereas an account hath this day been taken of the principal and interest due to the said (*mortgagees*) on their said recited securities and it appears that the same amount to the sum of £ and the said several persons who are parties hereto of the parts do declare themselves to be satisfied with and do admit the same account testified by their execution hereof.

No. DLXIV.

Of Debt upon an Account stated.

No. DLXIV.

Debt.

Whereas upon an account stated between the said A. B. and C. D. the said A. B. is and stands justly and truly indebted unto the said C. D. upon the balance of the same account in the sum of £ which the said A. B. doth hereby acknowledge.

No. DLXV.

*Debt
upon a Bond.*

No. DLXV.

Of Debt upon a Bond.

Whereas the said A. B. is and standeth justly indebted unto the said C. D. in the sum of £ for principal and interest upon a bond or obligation bearing date the day of 18 made and entered into by the said A. B. to the said C. D. in the penal sum of £ conditioned for the payment of £ and interest at a certain time now past.



No. DLXVI.

*Upon a
Judgment.*

No. DLXVI.

Or upon a Judgment.

Whereas the said A. B. is and stands indebted unto the said C. D. in the sum of £ for damages and costs of suit in a judgment obtained in her Majesty's Court of Queen's Bench at Westminster in or as of Michaelmas Term in the year &c. against the said A. B. which he the said A. B. doth hereby confess and acknowledge.



No. DLXVII.

*Upon Two
Judgments.*

No. DLXVII.

Another upon Two Judgments.

Whereas the said A. B. deceased in his lifetime obtained two several judgments in &c. at &c. on or about the day of 18 (that is to say) one of such judgments was for the sum of £ upon and by virtue of a bond entered into by the said C. D. to the said A. B. in the penal sum of £ besides costs of suit and the other judgment for &c.



No. DLXVIII.

*Of Statutory
Release.*

No. DLXVIII.

Of Statutory Indenture of Release.

Whereas by an indenture of release dated the day of made in pursuance of an act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties and expressed to be made between (*parties*) the lands and hereditaments hereinafter described and intended to be hereby granted were [together with other hereditaments] with the appurtenances assured and limited To such uses &c. [*set out the uses.*]

No. DLXIX.

Of Indentures of Lease and Release.

No. DLXIX.

*Lease and
Release.*

Whereas by indentures of lease and release bearing date respectively the and days of 1840 the release being made or expressed to be made between (*parties*) the lands &c. [or “*And whereas* by an indenture of release dated &c. grounded on a lease for a year and expressed to be made &c.”]

No. DLXX.

Of a Deed Poll appointing a new Trustee.

No. DLXX.

Deed Poll.

And whereas by a deed poll bearing date the day of under the hands and seals of (*cestui que trust*) and M. his wife and W. W. and by them signed sealed and delivered in the presence of and attested by two credible witnesses *After reciting* that the said W. W. was desirous of relinquishing the trusts by the said in part recited indenture in him reposed and that he had applied to the said (*cestui que trust*) and M. his wife to be discharged therefrom to which they had consented *It was witnessed* that the said (*cestui que trust*) and M. his wife in exercise of the power vested in them by the said indenture did appoint A. H. to be a trustee in the room of the said W. W. to act with the said A. G. in the trusts in the same indenture expressed *And* by the said deed poll the said W. W. and A. G. did assign the said messuages unto W. G. in trust to assign the same unto A. G. and A. H. their executors administrators and assigns upon the trusts aforesaid.

No. DLXXI.

Of a Feoffment.

No. DLXXI.

Feoffment.

Whereas by an indenture of feoffment bearing date &c. and made or expressed to be made between (*vendor*) of &c. of the one part and (*purchaser*) of &c. of the other part and perfected by livery of seisin a memorandum of which is thereupon indorsed In consideration of the sum of £ paid by the said

No. DLXXI. (P.) to the said (V.) he the said (V.) did grant and enfeof unto the said (P.) his heirs and assigns *All* and singular the messuages or tenements hereditaments and premises hereinafter described and intended to be hereby granted *To hold* the same unto and to the use of the said (V.) his heirs and assigns for ever [*if a power of attorney is given to deliver seisin, add, "In which said indenture I. P. was duly authorized to deliver seisin of the said premises to the said (P.) according to the tenor of the said feoffment and seisin was accordingly so delivered as appears by a memorandum indorsed on the same indenture."*]



No. DLXXII.
Fine.

No. DLXXII.
Of a Fine.

Whereas the said J. S. and S. his wife did as of Term in the year before the justices of the Court of Common Pleas in due form acknowledge and levy unto R. R. of in the county of gentleman one fine *sur consuance de droit come ceo* &c. with proclamations according to the form of the statute in such case made and provided of all those messuages &c. whereof the said hereby bargained and sold is part and parcel.



No.
DLXXIII.
Inquisition.

No. DLXXIII.
Of an Inquisition.

And whereas by an inquisition taken at &c. on &c. by virtue of her Majesty's writ of extent it was amongst other things found that the said C. D. was seised in fee at the time of the entering into the said recognizance and at the time of taking the said inquisition of and in one messuage &c. [*describe premises*] of the clear yearly value of £ above reprises and also of and in &c. which said messuages lands and premises the said sheriff on the day of taking the said inquisition caused to be delivered to the said A. B. under and by virtue of the said recited extent *To hold* the same unto the same A. B. and his assigns &c. (*as above.*)

No. DLXXIV.

Of a Judgment.

And whereas the said (*mortgagee*) in or about Term 18 recovered a judgment in her Majesty's Court of Common Pleas at Westminster against the said (*mortgagor*) for £ debt and £ costs which judgment is still in force as by record thereof reference being thereto had will more fully appear.

No. DLXXIV.

Judgment.

No. DLXXV.

Of a Lease.

Whereas by indenture of lease bearing date and made or expressed to be made between the said (*lessor*) of the one part and the said (*lessee*) of the other part *It is witnessed* that for the considerations therein mentioned the said (*lessor*) *Did* demise lease set and to farm let unto the said (*lessee*) his executors administrators and assigns *All* that &c. *To hold* the same with the appurtenances unto the said (*lessee*) his executors &c. for the term of years commencing from the day next before the day of the date of the now reciting indenture at or under the yearly rent of £ and under and subject to the covenants and agreements in the said lease reserved and contained and on the part of the said (*lessee*) his executors administrators and assigns to be observed and performed.

No. DLXXV.

Lease.

No. DLXXVI.

Of a Letter or Power of Attorney to receive Rents.

Whereas the said A. B. by a certain instrument in writing or letter of attorney dated on or about &c. hath nominated constituted and appointed the said C. D. to demand recover and receive in the name and for the use of the said A. B. by such lawful ways and means as may be necessary for such purpose of and from all and every person or persons whom it doth concern all rents and arrears of rent for all and every the messuages &c. situate with such further powers and authorities as are therein mentioned.

No. DLXXVI.

*Letter of
Attorney.*

No.
DLXXVII.
*Mortgage in
Fee.*

No. DLXXVII.

Of Mortgage in Fee.

Whereas by indenture bearing date &c. and made between &c. in consideration of the sum of £ advanced by the said (*mortgagee*) to the said (*mortgagor*) He the said (*mortgagor*) *Did* thereby grant and convey unto the said (*mortgagee*) his heirs and assigns *All* that manor &c. therein described [*or* “the messuage and lands hereinafter described and intended to be hereby granted”] *To hold* the same unto the said (*mortgagee*) his heirs and assigns for ever *Subject* nevertheless to a proviso therein contained for the redemption of the same manor &c. on payment by the said (*mortgagor*) his heirs executors administrators or assigns unto the said (*mortgagee*) his executors administrators or assigns of the sum of £ with interest thereon at the rate and on the day in the said indenture now in recital mentioned.

No.
DLXXVIII.
Further Charge.

No. DLXXVIII.

Deed of further Charge.

And whereas by an indenture dated &c. and made or expressed to be made between (*parties*) in consideration of the further sum of £ paid by the said (*mortgagee*) to the said (*mortgagor*) the said (*mortgagor*) did covenant with the said (*mortgagee*) his executors administrators and assigns That the said messuage and hereditaments comprised in the said recited indenture of mortgage should thenceforth stand charged and chargeable as well with the payment of the said sum of £ [*original debt*] as of the sum of £ [*further advance*] with interest for the same after the rate of £4 per cent. per annum.

No. DLXXIX.
Short Form.

No. DLXXIX.

Short Form.

And whereas the said (*mortgagee*) hath since the execution of the said in part recited indenture lent unto the said (*mortgagor*) the sum of £ in addition to the said sum of £ therein mentioned and intended to be thereby secured.

No. DLXXX.

Of Death of Mortgagee intestate as to mortgaged Estate.

Whereas the said (*mortgagee*) departed this life in the month of 185 having made and signed his last will and testament in writing bearing date &c. And thereof appointed A. and B. executors who shortly after his decease duly proved the same in the Court of Probate [or "Principal Registry"] but the said will of the said (*mortgagee*) did not contain any particular or general devise by which the said (*mortgagee's*) estate and interest in the said mortgaged hereditaments and premises could pass And the same upon his decease descended to and became vested in the said A. B. as his eldest son and heir at law And whereas the said (*trustee*) died on the day of 185 having duly made and signed his last will and testament in writing dated &c. but without having thereby or otherwise made any general or specific devise or disposition which could affect any trust estates vested in him leaving the said A. and B. his only children and coheiresses at law.

No. DLXXX.
Death of Mortgagee intestate.

Of trustee.

No. DLXXXI.

Shorter Form.

And whereas the said (*mortgagee*) departed this life in or about the month of 18 intestate as to the said mortgage estate vested in him leaving the said (*heir*) his eldest son and heir at law him surviving and having by his will dated the day of appointed the said (*executor*) his executor who duly proved the said will in the Prerogative Court of the Archbishop of Canterbury [or "in the Consistory Court of "].

No. DLXXXI.
Shorter Form.

No. DLXXXII.

Of Will of Mortgagee.

And whereas the said (*mortgagee*) duly made and signed his last will and testament in writing bearing date on or about the day of and thereby gave and devised unto the said (*trustees*) their heirs and assigns all such real estates as were then vested in him by way of mortgage in order to enable them to recover and receive the money secured by such mortgage for the purposes of the said will.

No.
DLXXXII.
Will
(*Mortgagee*).

No.
DLXXXIII.
*Doubts as to
Vesting Estate.*

No. DLXXXIII.

Of Doubts as to vesting of Legal Estate.

And whereas doubts may arise whether the legal estate of inheritance of and in the freehold hereditaments of which the said (*original trustee*) was a trustee under or by virtue or means of the said hereinbefore in part recited indenture of appointment and release is vested in the said (*A.*) as the devisee named in the will of the said (*original trustee*) or in the said (*B.*) as the heir at law of the said (*original trustee*) and in order to obviate all such doubts as to the vesting of such legal estate the said (*A.*) and (*B.*) have agreed to join in the conveyance hereinafter contained.



No.
DLXXXIV.
Mortgage.

No. DLXXXIV.

Mortgage of Leaseholds.

And whereas by an indenture bearing date &c. and made between &c. the said (*mortgagor*) in consideration of the sum of £ then advanced to him by the said (*mortgagee*) did grant and assign unto the said (*mortgagee*) his executors administrators and assigns the several messuages or tenements and premises therein and hereinafter particularly described for all the residue of the said term *Subject* nevertheless to a proviso that if the said (*mortgagor*) his heirs executors or administrators should pay or cause to be paid unto the said (*mortgagee*) his executors administrators and assigns the sum of £ and interest on the day of next ensuing the date thereof then the now reciting indenture should cease and be void.



No.
DLXXXV.
Mortgage.

No. DLXXXV.

Mortgage of Copyholds.

Whereas by surrender duly made at a court holden for the said manor on the day of 18 in pursuance of an indenture bearing date the day of preceding and made between &c. the same lands and hereditaments comprised in the said indenture of mortgage were surrendered into the hands of the lord of the said manor to the use of the said (*mortgagee*) and his heirs subject to a condition or proviso therein contained for making void the same on payment by the said (*mortgagor*) to the said (*mortgagee*) of the sum of £ with interest thereon on a day therein mentioned and long since past.

No. DLXXXVI.

Possession of Lands for a Term as Tenants in Common.

Whereas under and by virtue of an indenture of lease dated on or about &c. and made between &c. the said A. B. and C. D. do hold and enjoy the messuage or tenement hereinafter described together with divers other messuages lands and hereditaments for the residue and remainder of a term of ninety-nine years as tenants in common at under and subject to the yearly rent of £ payable as therein mentioned and to the covenants and agreements in the said indenture of lease mentioned and contained on the part and behalf of the said A. B. and C. D. to be by them respectively performed and kept.

No.
DLXXXVI.
Possession
(Term).

No. DLXXXVII.

Of Possession by virtue of an Assignment.

Whereas the said A. B. by virtue of an indenture of assignment bearing date &c. and made between &c. is possessed of interested in or otherwise entitled unto the messuage &c. for the residue of a certain term of years.

No.
DLXXXVII.
Possession
(Assignment).

No. DLXXXVIII.

Of divers Assignments.

And whereas by divers mesne assignments and other acts and assurances in the law and ultimately by an indenture dated &c. and made or expressed to be made &c. the lands and other premises comprised in the said recited indenture of lease with the appurtenances became vested in the said for the remainder then unexpired of the said term of years *Subject* nevertheless to the payment of the rent by the same indenture reserved and thenceforth to become due and payable and the observance and performance of the covenants provisions and conditions on the part of the lessee his executors administrators and assigns thenceforth to be observed and performed.

No.
DLXXXVIII.
Mesne
Assignments.

No.
DLXXXIX.

Seisin in Fee.

No. DLXXXIX.

Seisin in Fee subject to a Mortgage.

Whereas the said A. B. deceased was at the time of his death seised in fee simple of the messuages lands and hereditaments hereinafter particularly described and released or intended so to be with the appurtenances subject to a mortgage thereof made for a term of years to (*mortgagee*) of &c. for securing to him the repayment of the sum of £ and interest which sum is still due and owing but all interest hath been paid up to the day of



No. DXC.

Another Form.

No. DXC.

Seisin by virtue of a Deed and Fine.

Whereas under and by virtue of a certain indenture of three parts bearing date &c. and made or expressed to be made between &c. and a fine *sur consance de droit come ceo* &c. duly levied in her Majesty's Court of Common Pleas in or as of Hilary Term pursuant to a covenant in that behalf in the said indenture of release contained wherein the said A. B. was plaintiff and C. D. and M. his wife were deforceants the said A. B. became entitled to an absolute estate of inheritance in fee simple of and in the said capital messuage &c.



No. DXCI.

Settlement.

No. DXCI.

Of a Marriage Settlement.

Whereas by indenture bearing date &c. and made between &c. being a settlement executed previously to and in consideration of a marriage then intended (and which shortly afterwards was duly had and solemnized) between (*intended husband*) and M. (*intended wife*) *It was witnessed* in and by the said indenture covenanted declared and agreed by and between the said parties that they the said should and would &c.

No. DXCII.

Of Transfer of Stock.

No. DXCII.

Stock
(Transfer).

Whereas the capital sums of £ 3 per cent. Consolidated Bank Annuities and £ Reduced Bank Annuities the property of the said hospital have been this day transferred into the joint names of the said parties hereto and do now stand in their joint names in the books of the Governor and Company of the Bank of England.

No. DXCIII.

Of Title to Dividends Stock.

No. DXCIII.

Title to
Dividends.

Whereas the said A. is entitled for his life under the will of B. deceased to the dividends and annual proceeds of a sum of £ [*name the stock*] now standing in the joint names of C. and D. as trustees named in the said will in the books of the Governor and Company of the Bank of England.

No. DXCIV.

Of a Surrender of Copyholds.

No. DXCIV.

Surrender
(Copyholds).

Whereas at a court holden in and for the said manor of on the day of [*or*, "this day holden for the said manor;" *or* "this day out of court"] the said lands and hereditaments were duly surrendered by the said (*sendor*) into the hands of the lord of the manor according to the custom thereof To the use &c.

No. DXCV.

Of Admittance of Devisee to Copyholds.

No. DXCV.

Admittance to
Copyholds.

Whereas at a court holden in and for the said manor of on the &c. the said A. B. was admitted tenant under and by virtue of the said hereinbefore in part recited will to the messuages lands and other hereditaments hereinafter described and covenanted to be surrendered with the appurtenances to hold the same to him the said A. B. and his heirs according to the form and effect of the said recited will of the lord according to the custom of the said manor.

No. DXCVI.

*Surrender
(Lease).*

No. DXCVI.

Of a Surrender of a Lease.

And whereas by a deed poll under the hand and seal of the said (lessee) bearing even date with these presents the said (lessee) hath surrendered and yielded up unto the said (lessor) All and singular the said messuages and premises to the intent that the said (lessor) may grant a new lease thereof during the lives of the (old nominees) and the said (new nominer) as hereinafter is mentioned.

RELEASES, OR CONVEYANCES.

1. *General Definition.**Different Kinds.*2. *Release of Lands, what it is.*

Where a Lease or a Bargain and Sale were formerly necessary.

3. *What may be conveyed by Release.*

General definition.

SECT. 1. A deed of release is an instrument whereby a man doth give or discharge the right or the action, which he may have or claim against another (Shep. Touch. 320), or it is the conveyance of a right or interest which one hath in a thing, to another who has the possession thereof, or some estate therein. Releases are of two kinds; namely, a release of lands, tenements and hereditaments, which was, until the 8 & 9 Vict. c. 106, the most usual mode of conveyance; and a release of actions, rights, &c., which are simply discharges.

Different kinds.

Release of lands, what it is.

2. A release of lands, &c., is a conveyance of a man's right in lands or tenements to another who has the possession, or some estate therein, 2 Bl. Comm. 324; 5 Bac. Abr. 680. Before the 4 & 5 Vict. c. 21, the release was accompanied with a lease or bargain and sale for a year, and the conveyance was on that account called a lease and release.

Where a lease or bargain and sale were formerly necessary.

At common law, where one was already in possession by a lease for a year, or any other shorter or longer term, a release to him by the lessor or heir would enure, by way of enlarging his estate, to give him the fee. Thus, if there be tenant for life, remainder for life with the reversion in fee, the person in reversion may release to him in remainder for life, for though he has no possession, yet he had an estate actually vested in him, Co. Litt. 270, a; 2 Sand. Uses and Trusts, 60. But where any particular estate was created in this manner, for the purpose of conveying the fee, an actual entry was necessary, in order to vest in the tenant the possession on which the release was to operate. Where a bargain and sale, under the Statute

Releases
(*Conveyances*).

of Uses, was made for the same purpose, it superseded the necessity of actual entry; and as bargains and sales for a year do not require to be enrolled, they were most usually adopted. A release generally dated the day after the bargain and sale was accordingly made, and thus an estate of freehold was transferred, without entry, feoffment, or livery of seisin. But where the bargainee could not stand seised to a use, as in the case of corporations, then the estate for a year should be created by a lease at common law, accompanied by an actual entry by the lessee, 2 Sand. Uses, 63. A bargain and sale was not necessary where the party was already in possession, as a lessee at will or a mortgagee. So, likewise, a joint tenant, or coparcener, was capable of taking a release of the other's right without any bargain and sale, because each is seised of his companion's share as well as his own; but in conveying an estate from one tenant in common to another, a bargain and sale was necessary, because the seisin of these tenants is distinct. But a release of that kind would not operate on the possession of an under-lessee, or a tenant at sufferance by elegit or statute merchant, Co. Litt. 270—273; Shep. Touch. 324; 2 Sand. on Uses, 59. In a conveyance of lands by release, in Jamaica and the West Indies, a lease for a year is not required; and by the Irish Statute, 9 Geo. 2, c. 5, the recital of a lease for a year, in a conveyance of lands, was made to be sufficient evidence of its existence. The recital or mention of a lease for a year in a release executed before 18th May, 1841, is evidence of the execution of such lease for a year, 4 & 5 Vict. c. 21, s. 2.

The 4 & 5 Vict. c. 21, rendered a release valid, without a lease or bargain and sale for a year, but required the release to express that it was made in pursuance of that statute. By the 8 & 9 Vict. c. 106, s. 2, which enacts that all corporeal tenements and hereditaments should be deemed to lie in grant as well as in livery, the release, with reference to the 4 & 5 Vict. c. 21, is become unnecessary, and conveyances are now made by the words grant and convey, or grant and confirm, see *ante*, pp. 19, 20.

3. Whatever may be conveyed to uses may be conveyed by release, therefore an incorporeal hereditament *in esse*, which savours of the realty, may be conveyed by it, *Taylor v. Vale*, Cro. Eliz. 166. A person seised of the inheritance in remainder or reversion, may release it to the tenant of the freehold; but as a vested estate was necessary for the perfection of this mode of conveyance, it could not avail as a transfer of a contingent remainder nor an executory interest, 2 Prest. Conv. 269.

What may be conveyed by release.

By stat. 8 & 9 Vict. c. 106, s. 6, since the 1st October, 1845, a contingent, an executory, and a future interest, and a possibility coupled with an interest in any tenements or hereditaments of *any tenure*, whether the object of the gift or limitation of such interest

Contingent and other like interests and rights of entry alienable by deed.

Releases
(*Conveyances*).

or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in England, of any tenure, may be disposed of by deed, but no such disposition will, by force only of that act, defeat or enlarge an estate tail, and any such disposition by a married woman must be conformable to the Act 3 & 4 Will. 4, c. 74. See Shelford's Real Prop. Stat., p. 597, n., 6th ed., and *Ib.* pp. 329—332, as to the alienation of the above interests before that act. See No. DXLI., *ante*, p. 1293.

RELEASES, OR DISCHARGES.

- | | |
|---|---|
| 1. <i>To what Matters applicable.</i> | 5. <i>Distinction between Release and Covenant.</i> |
| 2. <i>By what Words.</i> | 6. <i>Operation.</i> |
| 3. <i>Operation of a General Release.</i> | 7. <i>Extent of the Release.</i> |
| 4. <i>Construction of Releases.</i> | 8. <i>Stamp.</i> |

To what matters
applicable.

SECT. 1. Releases, as simple discharges, consist of releases of actions, which may be discharged to him that is chargeable, releases of conditions annexed to estates, releases of covenants, services, &c.; so likewise rent-charges, dower, commons, and other rights and profits arising from or annexed to land, may be discharged, extinguished and determined by release to the tenant of the land; also possibilities of land, although they be not grantable over to a stranger at common law, yet they may be released to him that hath the present estate of the land, *Shep. Touch.* 322. All debts, legacies and other duties may be discharged before or after they become due, *Ib.* 323. As to releases of actions, annuities, bonds, covenants, &c., see further in their respective places.

By what words.

2. A release is most commonly and properly made by the words "remise and release and for ever quit claim" [*or* "remise, release, exonerate and discharge"] although it may be made by the words, "give, grant, and renounce," *Plowd.* 140; *Litt. sect.* 445; *Shep. Touch.* 320.

Operation of a
general release.

3. A release of all demands discharges all sorts of actions, rights, titles, conditions, executions, rents of all kinds, recognizances, statutes, commons, and the like then existing, *Litt.* 508; *Co. Litt.* 291. A general release of all actions, &c. to the day of the date of the release, does not include the day on which the release is dated.

Construction of
releases.

4. It has been established as a rule in the construction of releases, that where there are general words in a release they shall be taken most strongly against the releasor; but where there is a particular

recital in a deed, and then general words follow, the general words shall be qualified by the special. The effect of which rule is to render great care necessary in the preparation of the recitals of releases. The whole state of the case upon which a release is to be granted should be fully set out in the recitals, as the operative part is construed by the help of the recitals, see *ante*, pp. 849, 851.

Releases
(*Discharges*).

5. A covenant not to sue on a bond till such a time is a defeasance, but a covenant not to sue at all is a release, see *ante*, p. 899, sect. 3. Where an instrument amounts to a covenant only, and not to a release, it cannot be pleaded in bar.

Distinction
between release
and covenant.

6. A release of an annuity or rent-charge operates by way of extinguishment, and though made to one who is tenant for life will nevertheless be effectual, Co. Litt. 279.

Operation.

7. As a rent-charge issues equally out of every part of the land charged with the payment of it, a release of any part will by implication of law exonerate the whole, Co. Litt. 148; 2 Roll. Abr. 414; unless it be otherwise agreed between the parties. Whenever, therefore, a part only of the lands so charged are released from the rent for the purpose of being sold, care should be taken to continue the charge upon the remainder by an express stipulation to that effect, and such stipulation will operate as a new grant, Co. Litt. 147; see *ante*, No. CV., pp. 227, 228.

Extent of the
release.

8. Any deed, release and renunciation of lands or other property, or of any right or interest therein, not otherwise charged in the schedule to the Act 55 Geo. 3, c. 184, nor expressly exempted from all stamp duty, is chargeable with a 1*l.* 15*s.* stamp; and if the deed contains 2100 words or upwards, then for every entire quantity of 1080 words above the first 1080, a progressive duty of 10*s.*, see *ante*, p. 887.

Stamp.

No. DXCVII.

A General Release from One (a) to One. (General Form.)

No. DXCVII.

Actions
(*General Form*).

Know all Men by these Presents That I (*releasor*) of &c. for and in consideration of the sum of £ to me paid by (*releasee*) of &c. *Do* hereby remise release and for ever discharge the said B. C. his heirs executors and administrators of and from all and all manner of action and actions suit and suits cause and causes of action and suit debts dues sum and sums of money accounts reckonings bonds bills specialties covenants contracts contro-

(a) Where there are several releasors or releasees, see the *subsequent Precedents*.

No. DXCVII. *Actions (General Form).* versies agreements promises damages judgments extents executions claims and demands whatsoever in law and equity which against the said (*releasee*) I ever had or now have or which I my heirs executors or administrators hereafter can shall or may have for upon or by reason of any matter cause or thing whatsoever from the beginning of the world to the day of the date of these presents *In witness &c.*

—◆—

Release of an Annuity on Repurchase, see ante, No. CVI., pp. 229, 230.

—◆—

No. DXCVIII.

No. DXCVIII.

Bond.

Release of a Bond to several Obligors, it being lost or mislaid.

Effect of release to one of several.

Obs. 1. Where there are several obligees, a release by one of them will be a release of the entire bond. So a release to one of two joint and several obligors will be a discharge to the other.

Release by parol or deed.

2. A promise by words may, before breach, be discharged by words; but the release of a bond must be by deed; and a testamentary disposition will not operate as a release of a bond. Of the release of debts by legacies, see Wms. on Exors., Part III., B. III., Ch. II., s. 9.

Recitals.

To all &c. A. B. of &c. sendeth greeting Whereas (releasees) by their bond or obligation bearing date &c. became bound &c. And whereas the sum of £ mentioned in the said bond with all interest for the same is paid and satisfied unto the said A. B. in full discharge for the said bond or obligation And whereas the said bond or obligation is lost or at present mislaid so that it cannot be found and delivered up to the said (releasees) Now these Presents witness That the said A. B. for the consideration aforesaid Doth hereby remise release and quit claim unto the said (releasees) and every of them their and every of their heirs executors and administrators as well the said recited bond or obligation as all such sums of money as are therein mentioned to be due and payable unto me the said A. B. my executors &c. And also all actions suits accounts reckonings claims and demands whatsoever for upon account or in respect of the said bond or obligation In witness &c.

Testatum.

No. DXCIX.

Release of a Covenant (by Endorsement).

No. DXCIX.

Covenant.

Obs. By a release of all covenants from the covenantee, the covenant is discharged, so as the release be by deed, for a covenant cannot be discharged by mere words, only by an act of equal solemnity, Shep. Touch. Prest. Ed. 181.

Know all Men That they the said A. B. and C. D. *Do* and each of them *Doth* hereby remise release and for ever discharge the said (*releasee*) his heirs &c. of from and against the said covenant and agreement on the part of the said (*R.*) his heirs &c. in the within written indenture contained And of and from all actions suits accounts reckonings claims or demands for upon account or in respect of the said covenant and agreement or in relation thereto *In witness &c.*



No. DC.

Release of Dower.

No. DC.

Dower.

Obs. A release of dower must be made to the tenant of the freehold, otherwise it will be void. See *ante*, p. 953.

This Indenture made &c. Between (*releasor*) of &c. widow and relict of A. B. late of &c. deceased of the one part and (*releasee*) of &c. of the other part *Whereas* [*recite the descent, conveyance or will, by which the releasee is entitled to the land in possession*] *And whereas* the said (*father*) departed this life on or about the &c. intestate leaving the said (*releasee*) his eldest son and heir at law and the said (*releasor*) his widow whereupon the said (*releasor*) became and still is entitled to dower out of or in the messuages lands and hereditaments whereof the said (*father*) died seised [*or And whereas* the said (*releasor*) hath or claimeth to have a right or title of or to dower in and out of the said messuages &c. but in consideration of the sum of £ to be therefore paid to her by the said (*releasee*) she hath consented and agreed to release all such her right and title to dower in manner hereinafter mentioned] *Now this Indenture witnesseth* That for and in consideration of the sum of £ to the said (*releasor*) by the said (*releasee*) at or before the execution of these presents paid the receipt whereof and that the

No. DC.

Dower.

same is in full satisfaction of and for all and all manner of dower freebench and thirds and all right and title to dower freebench or thirds which she the said (*releasor*) hath or may or ought to have or claim of in to or out of the said messuages or tenements lands and other hereditaments hereinafter mentioned the said (*releasor*) doth hereby admit and acknowledge and of and from the same and every part thereof doth by these presents acquit release and for ever discharge the said (*releasee*) his heirs executors administrators and assigns She the said (*releasor*) *Doth* hereby remise release and quit claim unto the said (*releasee*) his heirs and assigns *All* the dower freebench and thirds and all right title claim or demand of or to dower freebench and thirds whether at common law or by custom which she the said (*releasor*) hath or may or if these presents had not been executed could claim of in or to all or any part or parts of the said messuages lands tenements and hereditaments of which the said (*father*) died seised And all and all manner of actions or suits touching or concerning the same And the said (*releasor*) for herself her heirs executors and administrators doth hereby covenant with the said (*releasee*) his heirs and assigns that she the said (*releasor*) or any other person or persons whatsoever for her or in her name any manner of action or suit or any manner of right or title shall not nor will at any time bring prosecute challenge or demand against the said (*releasee*) his heirs or assigns or his or their lands or tenements for or by reason of any dower or thirds due to her the said (*releasor*) but that she and they and every of them shall for ever hereafter by these presents be excluded and barred of and from all actions claims and demands of dower in and to the same [*Covenant by (releasor) that she had done no act whereby she is prevented from releasing and against incumbrances*] *In witness &c.*



No. DCI.

No. DCI.

*Legacy.**Release of a Legacy.*

Obs. A general release by several legatees to their executor requires but one stamp, that is to say, a common deed stamp.

To all &c. *Whereas &c.* [*recite will &c.*] *Now know ye* that the said (*legatees*) *Do* and each of them *Doth* by these presents respectively acknowledge declare and testify that on the day of

the date hereof they have severally had and received of and from the said (*executors*) the sum of £ each in full payment satisfaction and discharge of the said legacy or sum of £ so given and bequeathed to the said (*L.*) respectively as aforesaid and of and from the said legacy or sum of £ and every part thereof and all claims and demands touching the same *Do* and each of them *Doth* severally acquit release and discharge the said (*E.*) their executors &c. and every of them and the estate and effects of the said (*testator*) for ever by these presents *In witness &c.*

No. DCI.
Legacy.

—◆—
No. DCII.

Release of Legacy charged on Real Estates.

No. DCII.
Legacy.

This Indenture made &c. Between (*legatee*) of one part and (*derisee*) of the other part *Whereas* (*testator*) duly made and signed his last will and testament in writing bearing date &c. and thereby gave and devised all his messuages lands tenements and hereditaments situate &c. unto the said (*D.*) his heirs and assigns for ever *Subject* nevertheless to the payment of the legacy or sum of £500 to the said (*L.*) within six calendar months next after the decease of the said (*T.*) *And whereas* [*recite death of testator and probate of his will*] *And whereas* the said (*D.*) hath agreed to pay to the said (*L.*) the said legacy or sum of £500 upon the said (*L.*) executing such release as is hereinafter contained *Now this Indenture witnesseth* That in consideration of the sum of £500 to the said (*L.*) paid by the said (*D.*) upon or immediately before the execution of these presents the receipt &c. He the said (*L.*) *Doth* by these presents acquit release and for ever discharge the said (*D.*) his heirs and assigns and also all and every the messuages lands tenements and hereditaments whatsoever and wheresoever which by the said recited will were charged with the payment of the said legacy or sum of £500 and every part thereof with their appurtenances of and from the said legacy or sum of £500 and from all actions suits causes of action or suit powers remedies claims and demands whatsoever on account or in respect of the same legacy or sum or any part thereof or in anywise relating thereto [*Covenant by legatee that he had done no act whereby he was prevented from releasing the said legacy*] *In witness &c.*

Recital of will.

Of agreement
to pay legacy.

Release of
lands charged.

No. DCIII.

No. DCIII.

Right (Heir).

Release by an Heir at Law of a Testator to a Purchaser of a Copyhold Estate, where it had been sold by a Trustee under a Will.

Power.

Obs. 1. A release of a power is necessary only when it is coupled with an interest, a bare naked power not being the subject of a release, Co. Litt. 265 b; *Digge's case*, 1 Co. Rep. 174 a. A power relating to land may be destroyed by a release to any person having an estate of freehold in possession or reversion, 1 Co. 110 b.

Right.

2. A release of right to land operates to discharge or extinguish any right or title to lands. It need not be by indenture, but it must be by deed, Co. Litt. 264; Roll. Rep. 43; Leon. 283. In every such release, it is necessary that the person making it should have some right to release; as when one deprives me of land, and I release to him all my right, Shep. Touch. 333. Also he to whom the release is made should be tenant of the freehold, either in deed or in law, Litt. s. 447; Co. Litt. 265 b; Shep. Touch. 328. A release, therefore, to one who has only a term of years is void, Gilb. Ten. 54.

Recitals.

This Indenture made &c. Between (trustee) of &c. a trustee of the first part &c. (heir) eldest son and heir of A. B. late of &c. deceased of the second part and (purchaser) of &c. of the third part Whereas &c. [recite will devising real and personal estates to the said trustee upon trust to sell his real estates if his personal estate should not be sufficient for the discharge of his debts] And whereas [recite death of testator and probate of his will] And whereas the said (trustee) since the decease of the said (testator) hath been admitted to the said copyhold hereditaments

Recital that estate was insufficient for payment of debts.

And whereas the real and personal estate of the said (testator) exclusive of the said copyhold hereditaments are not sufficient for the payment of his debts and funeral and testamentary expenses and the said trustee in pursuance of the power for that purpose in the said in part recited will contained hath contracted with the said (P.) for the absolute sale to him of the said copyhold messuages &c. at or for the price or sum of £ And whereas the said (P.) hath previous to the execution of these presents paid unto the said (T.) the sum of £ which the said (T.) doth hereby acknowledge and in consideration of the said sum of £ so paid as aforesaid the said (T.) at a court baron holden the day of last past in and for the said manor of surrendered according to the custom of the said manor into the hands of the lord of the said manor all &c. To

Of surrender to purchaser.

the use of the said (P.) his heirs and assigns and at the same court the said (P.) was duly admitted tenant to the said copyhold premises To hold to him the said (P.) his heirs and assigns at the will of the lord of the said manor according to custom of the said manor And whereas upon the treaty for the said purchase it was agreed that the said (H.) as customary heir of the said (testator) should release unto the said (P.) All such estate right title and interest in and to the said copyhold hereditaments as may now be vested in the said (H.) as the customary heir of the said (testator) in such manner as hereinafter appears Now this Indenture witnesseth That in consideration of the said agreement and in consideration of the premises He the said (H.) Doth by these presents remise release and for ever quit claim unto the said (P.) his heirs and assigns All the right title interest trust power claim and demand whatsoever of the said (H.) as the customary heir of the said (testator) or otherwise in to or out of the said customary or copyhold messuages lands and hereditaments with their and every of their appurtenances To the end and intent That the said (P.) his heirs and assigns may henceforth be deemed and considered as the legal and rightful tenant and tenants of the said copyhold hereditaments and premises to the lord or lady of the said manor for the time being to all intents and purposes whatsoever And the said (H.) for himself &c. doth covenant &c. in manner following &c. [Covenants for title if the heir had a beneficial interest, see ante, pp. 452, 453, 1286, 1287, or covenant against incumbrances if the heir had no beneficial interest] In witness &c.

No. DCIII.
Right (Heir).

Testatum.

No. DCIV.

(As to Grants of a Right of Way, see ante, pp. 996—998.)

No. DCIV.
Right of Way.

*Release of a Right of Way in Consideration of the Grant
of another Road.*

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part Whereas the said A. B. is seised in fee simple of certain closes of land situate at &c. which are now or lately were in the occupation of &c. And whereas the said C. D. is also seised in fee simple of certain pieces or parcels

No. DCIV.
Right of Way.

Release of old
right of way.

Grant of new
right of way.

Covenant to
repair.

of ground lying &c. *And whereas* the said A. B. and all the owners and occupiers of the said closes have been accustomed from time immemorial to pass and repass from the closes of the said A. B. to and over the pieces and parcels of ground belonging to the said C. D. either on foot or on horseback and either with or without servants workmen horses carts and other carriages at all times of the year *And whereas* it would be much to the benefit and advantage as well of the said A. B. as of the said C. D. that the right of passage along the north side of the said pieces &c. of ground should be extinguished and a right of way given and granted in lieu thereof along the west side of the same pieces &c. *Now this Indenture witnesseth* That in consideration of the right of way hereinafter given and granted unto the said A. B. his heirs and assigns and also in consideration of the sum of £ to him the said A. B. in &c. paid by the said C. D. He the said A. B. *Doth* hereby remise release and quit claim unto the said C. D. his heirs and assigns all right title and claim which the said A. B. now hath to the liberty of passing to and over the said way or road on the north side of &c. either on foot &c. To the intent that the same may be extinguished *Subject* nevertheless to the proviso hereinafter contained *And this Indenture further witnesseth* That in consideration of the premises He the said C. D. *Doth* hereby give and grant unto the said A. B. his heirs and assigns and the owners and occupiers for the time being of the said closes of land of the said A. B. and every of them full and free liberty and privilege of passing and repassing on foot or on horseback either with or without servants workmen horses carts and other carriages at all times of the year as he or they shall think fit from the said closes of the said A. B. to and over the road lately made by the said C. D. along the west side of the said pieces of land of the said C. D. containing by admeasurement feet &c. *To have* hold use and enjoy the said liberty privilege and right of way hereby granted or intended so to be unto the said A. B. his heirs and assigns for ever *And* the said A. B. for himself his heirs executors and administrators *Doth* hereby covenant with the said C. D. his heirs and assigns that he the said A. B. his heirs and assigns shall and will at his and their own costs and charges from time to time and at all times for ever hereafter maintain and keep the said road hereby granted in good and sufficient repair without requiring any satisfaction for the same from the said C. D. his heirs and assigns or any other persons claiming

from through or under him or them or any of them [*Provided always* and it is hereby declared and agreed by and between the parties hereto to be the true intent and meaning of them and of these presents that in case the said A. B. his heirs and assigns or such owners or occupiers for the time being as aforesaid or his or their servants workmen or any of them shall at any time hereafter be obstructed or hindered in passing or repassing on foot &c. to and over the said road now made &c. by the said C. D. his heirs or assigns or any of them then these presents and every clause herein contained shall absolutely cease and determine anything herein contained to the contrary in anywise notwithstanding] [*Instead of the Proviso it seems advisable to add the following Covenants*] And the said C. D. doth hereby for himself his heirs executors administrators and assigns covenant with the said A. B. his heirs and assigns respectively owners for the time being as aforesaid That he the said C. D. now hath in himself good right and absolute authority to grant the premises hereby granted or intended so to be in manner aforesaid according to the true intent and meaning of these presents And that all and singular the premises hereby granted or intended so to be shall at all times hereafter be peaceably and quietly held and enjoyed by the said A. B. his heirs and assigns owners for the time being as aforesaid without any lawful interruption or disturbance whatever of from or by the said C. D. his heirs and assigns or any other person or persons lawfully claiming or to claim under him or them *And moreover* that the said C. D. and his heirs and assigns and all persons claiming or to claim any estate or interest in the premises hereby granted or intended so to be under him or them shall upon the request and at the expense of the said A. B. his heirs or assigns owners for the time being as aforesaid make and execute or cause to be made and executed such grants conveyances and assurances for the further and better assuring the premises hereby granted or intended so to be unto and to the use of the said A. B. his heirs and assigns owners for the time being respectively as aforesaid in manner aforesaid and according to the true intent and meaning of these presents as by him or them or his or their counsel in the law shall be reasonably advised and required *In witness &c.*

No. DCIV.
Right of Way.

Proviso for
avoiding re-
lease.

Covenants for
right to grant
way, &c.

Further
assurance.



No. DCV.

No. DCV.

*Trustees of
Settlement.**Release of Trustees on the Transfer of Stock.*Recital of
settlement.

This Indenture made &c. between A. B. and C. &c. (the parties beneficially interested) of the one part and (trustees) of the other part Whereas by indenture bearing &c. and made between &c. being the settlement made previously to and in consideration of the marriage then intended and shortly afterwards solemnized between the said (settlor) and Ann his wife since deceased It was thereby declared that the said (T.) should stand possessed of the sum of £

New Four Pounds per Centum Annuities standing in their joint names in the books of the Governor and Company of the Bank of England Upon trust [recite trusts] And whereas under and by virtue of an act of parliament passed in the fifth year of the reign of King George the fourth intituled "An Act for Transferring several Annuities of Four Pounds per Centum Annuities into Annuities of Three Pounds Ten Shillings per Centum per Annum" the said sum of £ was converted into the sum of £

Three Pounds Ten Shillings per Centum Reduced Annuities and by virtue of another act of parliament passed in the session held in the seventh and eighth years of her present Majesty intituled "An Act for Transferring certain Annuities of Three Pounds Ten Shillings per Centum per Annum and Government Debentures into Annuities of Three Pounds Five Shillings per Centum per Annum and New Three Pounds per Centum per Annum Annuities" the said sum of £

Three Pounds Ten shillings per Centum Reduced Annuities were converted into New Three Pounds per Centum per Annum Annuities And whereas the said (settlor) departed this life on or about &c. without having made any appointment in execution of the power for that purpose contained in the said recited indenture of settlement and therefore the said A. B. and C. as the only children of the said (settlor) have become entitled under the trusts aforesaid to the said sum of £

New Three Pounds per Centum Annuities in equal shares and proportions And whereas the said (T.) at the request of the said A. B. and C. have lately sold out the said sum of £

New Three Pounds per Centum Annuities and the produce of such sale after deducting brokerage amounted to the sum of £ sterling And whereas the said (T.) after deducting the succession duty payable in respect of the said trust funds amounting

Recital of alte-
ration of stock
by act of par-
liament.Of death of set-
tlor and title of
children.

Of sale of stock.

Of payment of
shares to chil-
dren.

to the sum of £ have before the execution of these pre-
 sents paid and distributed the sum of £ the residue of
 the said sum of £ to and amongst the said A. B. and C.
 in equal proportions as they hereby admit by their execution of
 these presents and for the greater satisfaction of the said (T.)
 the said A. B. and C. agreed to execute such release and
 covenant to indemnify as are hereinafter contained *Now this* Release.
Indenture witnesseth That in pursuance of the said agreement
 and in consideration of the premises they the said (releasers) Do
 and every of them Doth hereby remise release and discharge the
 said (T.) and each of them their and each of their heirs executors
 administrators and assigns and their respective estates and effects
 whatsoever and wheresoever of and from all and all manner of
 actions suits causes of action or suit accounts reckonings claims
 and demands whatsoever which they the said (R.) or any of them
 now have or hath or ever had or which they or any of them their
 or any of their executors or administrators can shall or may at
 any time or times hereafter have claim set up challenge or demand
 against them the said (T.) severally and respectively or their re-
 spective executors or administrators for or on account or in respect
 of the aforesaid sum of £ New &c. or any part thereof or any
 interest dividends or annual proceeds of the aforesaid trust monies
 stocks funds and securities or any part thereof or for or on account
 of all or any of the trusts by the said recited indenture of settle-
 ment declared and contained of or concerning the same or for or
 on account of any other act transaction matter or thing whatsoever
 concerning the said trusts or in anywise relating thereto And
 each of them the said A. B. and C. to the extent of his and her
 respective beneficial interest in the premises and not jointly nor
 further or otherwise doth for himself and herself severally and
 respectively and his and her several and respective heirs exe-
 cutors and administrators covenant and agree with the said
 (T.) their heirs executors and administrators That they the
 said A. B. and C. or some or one of them their or some or one
 of their heirs executors or administrators shall and will from
 time to time and at all times hereafter save defend keep harm-
 less and indemnified the said (T.) and each of them their and
 each of their heirs executors and administrators and his and
 their estates and effects whatsoever and wheresoever of from
 and against all losses damages costs charges and expenses what-
 soever by reason or in consequence of the transfers and pay-
 ments so respectively made by them the said (T.) as hereinbefore

No. DCV.

Trustees of
Settlement.

Release.

Covenant to in-
demnify trus-
tees.

No. DCV.
*Trustees of
 Settlement.*

is mentioned or any of them or any other act deed matter or thing whatsoever made done committed or executed or omitted by the said (T.) in or about the execution of the aforesaid trusts or any of them or in anywise relating to the premises *In witness &c.*

No. DCVI.

No. DCVI.
Debts.

Release from Creditors to a Debtor.

Recitals that
 debtor is in-
 debted.

To all &c. We who have hereunto set our hands and seals creditors of A. B. late of &c. send greeting *Whereas* the said A. B. is indebted to us his creditors in several sums of money which he is not able fully to satisfy and discharge we therefore have agreed and do hereby agree to receive the sum of £ in full payment and satisfaction of all the debts owing to us respectively at the date hereof by and from the said A. B. which sum is paid and delivered by or for the said A. B. to C. D. and E. F. or one of them To the intent that the same may be shared and divided among his said creditors in proportion and according to the debts severally due and owing *(a)* *Now therefore know ye* That for the consideration aforesaid each of us the said creditors of A. B. who have set our hands and seals for himself and herself his and her heirs executors and copartners *Doth* by these premises remise release and for ever discharge the said A. B. his heirs executors and administrators and his and their and every of their lands tenements goods and chattels of and from our said several debts and all and all manner of actions suits accounts reckonings claims and demands which against the said A. B. each and every of us the said creditors now hath or which each and every of our heirs executors or administrators respectively hereafter may can or ought to have claim or demand for or by

Testatum.

(a) Or, "the sum of shillings in the pound upon the amount of our respective debts being the several sums set opposite to our respective names and to execute such release as is hereinafter contained *And whereas* we the said several persons whose names are hereunder written and seals hereto affixed have respectively received the several sums set opposite to our respective signatures hereto being shillings in the pound upon the amount of our respective debts *Now know &c.* that for and in consideration of the several sums &c. we the several persons whose &c. *Do* and each and every of us *Doth* by &c. fully and absolutely remise &c."

reason of the said several and respective debts to us severally due and owing or for or by reason of any other matter (a) cause or thing whatsoever antecedent to the date of these presents *In witness &c.*

No. DCVI.
Debts.

No. DCVII.

Release from the Creditors under a Trust Deed to the Trustees on the Payment of the Dividends.

No. DCVII.
Trusts.

To all &c. We whose names and seals are by ourselves or our agents or attorneys hereunto subscribed and affixed creditors of A. B. of &c. under the trusts of an indenture bearing date &c. and made between &c. send greeting *Whereas* the said (trustees) have rendered an account of monies paid and received by them respectively on account of the said creditors and the trust estate and the same account or a copy thereof is contained in the schedule hereunder written or hereunto annexed and the creditors parties hereto are satisfied with the same and hereby declare their allowance and approbation of the same and the said (T.) have with the consent of the said creditors caused a dividend or payment of shillings in the pound to be made on the debts owing to the said creditors and have agreed to make a further dividend of shillings in the pound on the same debts and in pursuance of that agreement have paid to the said creditors parties hereto the several sums set against their respective names as and for a second dividend on the debts so due and owing to the said creditors respectively *Now know ye* and these presents witnes that we the said creditors parties hereto do hereby severally acknowledge and declare our respective receipts of the several sums set against our respective names as and for a second dividend and that the same sums are equal to shillings in the pound on the debts owing to us respectively

Recital of
account and
payments by
trustees.

Testatum.

(a) Add, if necessary, "And we the said several parties hereto do hereby for ourselves severally and not jointly and for our respective heirs executors and administrators covenant with the said A. B. his heirs executors and administrators that we and our respective heirs &c. shall and will at any time hereafter at the request and at the costs and charges in all things of the said A. B. his &c. make do and execute any such further and other lawful and reasonable acts and deeds &c. for the further &c. releasing exonerating and discharging the said A. B."

No. DCVII.
Trusts.

from the said (T.) or the said A. B. and we severally and respectively acquit release and discharge the said (T.) respectively and their respective heirs executors and administrators and every of them of and from the several sums set against our respective names and also of and from all actions and suits claims and demands whatsoever by reason or on account of the sum paid to us as aforesaid as and for the second dividend of shillings in the pound on the debts due and owing to us respectively as aforesaid and also by reason or on account of all or any of the acts and proceedings of the said (T.) in the management of the said trust estate and the application thereof as far as the same acts and proceedings appear by the account contained in the said schedule *In witness &c.*
The schedule above referred to.

See other Forms of Release, ante, pp. 581—584.

RENUNCIATIONS, OR DISCLAIMERS.

- | | |
|---|---|
| 1. <i>Definition.</i> | 3. <i>An Executor not acting, or not appearing to a citation, to be treated as if he had renounced.</i> |
| 2. <i>Rights of an Executor renouncing probate to cease, as if he had not been named in the Will.</i> | 4. <i>Disclaimer.</i> |
| | 5. <i>Stamp duty.</i> |

Definition.

SECT. 1. A renunciation, or disclaimer, is an express denial or renouncing of a claim. A release by one trustee to a co-trustee will not operate as a disclaimer, unless the release be made with intent to disclaim.

Rights of an executor renouncing probate to cease, as if he had not been named in the will.

2. An executor may refuse to take upon him the executorship of a will, although in the lifetime of the testator he has agreed to accept the office. The law on this subject, previously to the statute next cited, will be found in Wms. on Exors., Part I., Bk. III., Ch. VI., ss. 1, 2. Where any person renounces probate of the will of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation

to the testator, and the administration of his effects, shall and may without any further renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor, 20 & 21 Vict. c. 77, s. 79.

*Renunciations
(Disclaimers).*

3. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects, shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor, 20 & 21 Vict. c. 95, s. 16.

An executor not acting, or not appearing to a citation, to be treated as if he had renounced.

4. A trustee or devisee of an estate of freehold and inheritance, or of a less estate, who refuses to accept the trust or the estate, may disclaim by deed, so as to make the estate void as to him, *Townson v. Tickell*, 3 B. & Ald. 13; and if there be several trustees, or devisees, so as to vest the entire legal estate in the co-trustees or devisees, *Begbie v. Crook*, 2 Bing., N. C. 70; 2 Scott, 128; *Doe d. Chidgey v. Harris*, 16 M. & W. 517; *Small v. Marnood*, 9 B. & C. 300; *Bronell v. Reed*, 1 Hare, 435. Assuming that a disclaimer of a devise may be by parol, or by conduct evidencing an intention not to accept the devise or trust, it is always advisable to obtain a deed of disclaimer from a devisee or trustee refusing to accept a trust or devise, as it affords the best evidence of his intention, *Stacey v. Elph*, 1 Myl. & K. 195; see *Doe d. Smyth v. Smyth*, 6 B. & C. 112; 9 D. & R. 136; *Rex v. Wilson*, 10 B. & C. 5; 5 M. & R. 140.

Disclaimer.

A disclaiming trustee ought not to release and convey the estate to his co-trustees, as such a form of conveyance may import an acceptance of the trust, *Crewe v. Dickin*, 4 Ves. 97; see *Nicloson v. Wordsworth*, 2 Swanst. 371; Shelford's Real Prop. Stat., pp. 378—381, 6th ed. A married woman may by deed, acknowledged conformably to the stat. 3 & 4 Will. 4, c. 74, disclaim an estate or interest in any tenements or hereditaments in England of any tenure, 8 & 9 Vict. c. 106, s. 7.

5. A renunciation of any right or interest in property, otherwise than upon a sale, is charged with a stamp of 1*l.* 15*s.*, and if it contains 2160 words and upwards, the further progressive duty of 10*s.* for every 1080 words over and above the first 1080. See *ante*, p. 887.

Stamp duty.

Renunciation upon the sale of any property requires the same stamp as upon a conveyance, *ante*, p. 879.



No. DCVIII.

No. DCVIII.

*Of Probate.**Renunciation of Probate and Administration with the Will annexed.*

In her Majesty's Court of Probate The District Registry
of

Whereas A. B. late of in the county of deceased died on the day of 18 at and had at the time of his death a fixed place of abode at within the said district of and whereas he made and duly executed his last will and testament bearing date the day of 18 (a) and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*] Now I the said C. D. do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased and will not hereafter intermeddle therein with intent to defraud creditors and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*] and to the letters of administration with the said will [*and codicils, if any*] annexed of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor or attorney appears for the person renouncing*] And I hereby appoint E. F. of my proctor [*"solicitor" or "attorney"*] to file or cause to be filed this renunciation for me in the said district registry of attached to her Majesty's Court of Probate] *In witness* whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed sealed and delivered by the said C. D. in the presence of G. H. [*One disinterested witness sufficient*].



No. DCIX.

No. DCIX.

*Of Administration.**Renunciation of Administration.*

In her Majesty's Court of Probate The District Registry
of

This to be
varied accord-
ing to the fact.

Whereas A. B. late of in the county of deceased died on the day of 18 at intestate a widower and had at the time of his death a fixed place of abode at

(a) If there are codicils their dates should be also inserted.

within the said district of _____ and whereas I C. D. of _____
 am his natural lawful child and his only next of kin Now I the _____
 said C. D. do hereby declare that I have not intermeddled
 in the personal estate and effects of the said deceased and do
 hereby expressly renounce all my right and title to the letters of
 administration of the personal estate and effects of the said de-
 ceased [*add in cases where a proctor, solicitor or attorney appears*
for the person renouncing And I hereby appoint E. F. of _____
 my proctor [“solicitor” or “attorney”] to file or cause this re-
 nunciation to be filed for me in the district registry of
 attached to her Majesty’s Court of Probate] *In witness* whereof
 I have hereto set my hand and seal this _____ day of _____ 18 ____
 C. D.

Signed sealed and delivered by the said C. D. in the presence
of G. H. [*One disinterested witness sufficient*].

No. DCX.

Renunciation, or Disclaimer, by a Trustee declining to accept the Trusts of a Will.

No. DCX.
Trusts.

To all persons to whom these presents shall come A. B. of &c. sends greeting Whereas H. R. late of &c. deceased duly made and signed his last will and testament in writing bearing date &c. And thereby bequeathed his personal estate to the said A. B. and C. D. their executors administrators and assigns *Upon trust* to convert the same into money and to stand possessed thereof upon certain trusts therein mentioned and the said testator devised certain real estates unto and to the use of the said A. B. and C. D. their heirs and assigns for ever *Upon trust* that they the said A. B. and C. D. and the survivor of them his heirs and assigns or the trustees or trustee for the time being should absolutely sell and dispose thereof and should make and execute proper deeds And the said testator thereby declared and directed that the receipts of the said A. B. and C. D. &c. should be good and valid discharges &c. *And whereas* [recite death of testator without altering or revoking his will] *And whereas* the said C. D. hath alone duly proved the said will in the Court of Probate Principal Registry *And whereas* the said A. B. hath not accepted the said recited bequest and devise nor acted in the execution of the trusts of the said recited will nor done any

No. DCX.

Trusts.

act which can amount to the acceptance of the devise of the real estates of the said testator contained in his said will And is desirous and hath declared his intention to renounce and wholly disclaim the devises and bequests therein contained [*or instead of the last recital as follows* And whereas the said A. B. has never accepted or acted in the trusts of the said here-inbefore in part recited will [*“ or settlement ”*] but hath refused to perform the same and is desirous of disclaiming the said trusts in manner hereinafter appearing] *Now these presents witness* That the said A. B. *Doth* hereby absolutely and irrevocably renounce and disclaim all the real and personal estates trusts powers and authorities whatsoever in and by the said in part recited will of the said testator deceased devised bequeathed or given to the said A. B. and C. D. their heirs executors administrators and assigns or otherwise To the intent that such bequests devises trusts powers and authorities may take effect and be executed or exercised as if originally made to or vested in or confided to the said C. D. only *In witness &c.*

RESIGNATIONS.

1. *To whom to be made.*
2. *Must be unconditional.*

3. *Resignation of a Benefice.*

To whom to be made.

SECT. 1. For a resignation to take effect, it must be made to a proper person, Cro. Jac. 63; Noy, 147. If the living be a donative, it must be made to the patron, and not to the bishop, Degge, pl. 1, c. 14. It must likewise be made in person, and not by proxy, *Ib.*; Wats. Par. L. c. 4; Gibs. Cod. 822.

Must be unconditional.

2. A resignation must be not only absolute and unconditional, but also voluntary and without any consideration whatever, Wats. c. 4; Godb. 277. So, likewise, a resignation will not be valid until it is accepted by the bishop or the patron, Gibs. 822; 3 Burn's Eccl. Law; tit. Resignation. As to resignations, see further, BONDS (*to resign*), ante, pp. 556, 557.

Resignation of a benefice.

3. A resignation of a benefice must be brought, read and executed before a notary public, who subscribes his name thereto, and the day of the date when executed.

No. DCXI.

Resignation of a Benefice.

No. DCXI.

*Resignation of a
Benefice.*

In the Name of God, Amen, Before you (*a*) the Notary Public and credible witnesses here present I A. B. Master of Arts rector of in the county of and diocese of for certain just and lawful causes me hereunto especially moving without fraud or deceit do absolutely resign and give up my rectory of the parish church of aforesaid with all and singular the rights members and appurtenances thereunto belonging into the hands of the Right Reverend Father in God R. by Divine permission Lord Bishop of or of any other person whomsoever who hath or shall have power to admit this my resignation *And* I totally renounce my right title and possession in and to the said rectory of *And* I do quit and expressly recede from them by these presents and that this my resignation may have its full effect I do hereby nominate and appoint my beloved in Christ (*b*) C. D. gentleman to be my true and lawful proctor or substitute to exhibit this my resignation to the said Right Reverend Father in God and in my name to pray that his lordship would graciously vouchsafe to accept thereof and to pronounce and declare the same rectory void and to be void of any parson to all intents and purposes in law that may follow thereupon (*c*) and to decree that the said voidance may be intimated to the patron of the said living *In witness &c.*

REVOCATIONS.

Obs. A revocation is a destroying or making void some deed or instrument that had existence before the act, 1 Lill. Conv. 371.

(*a*) When the resignation is taken before the bishop, say, “before you the Right Rev. Father in God R. by Divine Providence &c. and credible &c.”

(*b*) The bishop’s secretary is usually appointed proctor, but any other proctor will do.

(*c*) This last clause is not necessary where the right of presentation is in the bishop.

No. DCXII.

No. DCXII.

Appointment.*Revocation of a Deed of Appointment and new Appointment (irrevocable) by Indorsement.*

Obs. 1. Deeds of revocation of uses are founded on a power previously reserved in the deed, whereby the uses were raised, to revoke such uses as were therein contained, and to appoint others in their stead, 2 Bl. Com. 339; but a power can only be executed once, unless the party reserves a new power of revocation, Shep. Touch. 525. All the incidental circumstances, as sealing, subscription of the names of witnesses, and the like, must be observed in the execution of this power, otherwise the revocation will not be good. As to revocations, see further, APPOINTMENTS, *ante*, pp. 232, 233, No. DXXXV., *ante*, pp. 1268—1271.

Stamp.

2. A revocation of any use or trust concerning any property real or personal, where made by any writing *not being* a deed or will or by deed, is chargeable with a stamp of 1*l.* 15*s.* together with the progressive duty of 10*s.*

Testatum.

Know all &c. that the within named M. M. the elder in pursuance of the power or authority for that purpose reserved to her in and by the within written deed and by force and virtue thereof and of every other power and authority in anywise enabling her in this behalf by this present deed in writing duly executed by her the said M. M. the elder in the presence of and attested by the two credible witnesses whose names are hereunder written *Doth* by these presents absolutely revoke determine and make void the appointment and appointments made or expressed to be made in and by the within written deed of and concerning the within mentioned £ Three per Cent. Consolidated Bank Annuities *And doth* irrevocably direct and appoint That the said £ Three per Cent. Consolidated Bank Annuities shall from and after the decease of the said M. M. the elder remain and be *In trust* for &c. [*here set out the trusts*] *In witness &c.*

No. DCXIII.

No. DCXIII.

*Power of Attorney.**Revocation of a Power of Attorney.*

Obs. Letters of attorney, and other personal authorities under seal, may be revoked by instruments of the same nature, that is to say, by deeds under seal, by the persons giving the power, even although

they are made irrevocable, 8 Co. 82; Wood's Inst. 286. But where a power of attorney is given as part of a security for money, it is not revocable, *Walsh v. Whitcomb*, 2 Esp. 565; *ante*, p. 1172, n. No. DCXIII.

*Power of
Attorney.*

Know all &c. that I A. B. of &c. for divers good causes and considerations me hereunto specially moving *Do* hereby revoke countermand annul and make void a certain deed-poll or power of attorney under my hand and seal bearing date the to C. D. of &c. given delivered and executed and all powers and authorities whatsoever therein expressed and declared *In witness &c.*

SEPARATION.

- | | | |
|--|--|--|
| 1. <i>Deeds of Separation, when valid.</i> | \| | 2. <i>Covenant to indemnify husband.</i> |
|  | \| | 3. <i>Stamp.</i> |

SECT. 1. A provision in any instrument for the separate maintenance of a wife, in contemplation of a future separation at her pleasure, cannot, it seems, after a number of conflicting decisions, be enforced either at law or in equity, *Guth v. Guth*, 3 Br. C. C. 614; *Rodney v. Chambers*, 2 East, 283; *Lord St. John v. Lady St. John*, 11 Ves. 526; *Durant v. Titley*, 7 Price, 577; *Cocksedge v. Cocksedge*, 14 Sim. 244; 5 Hare, 397. Any agreement made before or after marriage, which contemplates the future separation of husband and wife, is void, as contrary to the policy of the law, *Anon.* 3 Kay & J. 382; *Cartwright v. Cartwright*, 3 De G., M. & G. 982. But as to deeds operating *in presenti*, courts of equity will still so far countenance them, as to oblige the husband to perform that part of the contract which relates to the payment of the separate maintenance. The Court of Chancery has refused to decree specific performance of agreements for separation, *Vansittart v. Vansittart*, 2 De G. & J. 249; 4 Kay & J. 63; *Walrond v. Walrond*, 4 Jur., N. S. 1099.

Deeds of separation.

2. The covenants by the trustees to indemnify the husband against the wife's debts are essential, as they constitute the consideration for the settlement made by the husband. If upon a separation the husband settle an estate upon his wife, and a friend of hers covenant to indemnify the husband against any debts which she may contract, this will be a sufficient consideration to uphold a settlement as valuable, *Stephens v. Olave*, 2 Br. C. C. 90. See 11 Ves. 526; *Worrall v. Jacob*, 3 Mer. 256; *Wellesley v. Wellesley*, 10 Sim. 256. A

Covenant to indemnify husband.

Separation. covenant to put an end to a suit against the husband in the Ecclesiastical Court, or to pay him an annuity, or to pay his existing debts, was held to be a sufficient consideration to support such a deed, *Wilson v. Wilson*, 14 Sim. 405; 9 Jur. 148; 14 Law J., Ch. 204; 5 H. L. Cas. 40; 23 Law J., Ch. 697. A deed of separation between husband and wife containing no covenant on the part of the trustee to indemnify the husband, is not on that account void, *Frampton v. Frampton*, 4 Beav. 287. See 2 Bright's ed. Roper on Husband and Wife, pp. 306—354.

Stamp. 3. As to the stamp, this comes under the general head of "deeds not otherwise charged," *ante*, p. 895, pl. 65; unless any sum be settled on the wife, when it would come under the head of SETTLEMENT, *post*, p. 1367.

No. DCXIV.

Deed of Separation.

No. DCXIV.

*Deed of Separation.**Recitals.*

This Indenture made &c. Between (husband) of &c. of the first part (wife) the wife of the said (H.) of the second part and (trustees) trustees &c. on behalf of the said (wife) of the third part Whereas [recital of a lease of the premises where the trade was carried on] And whereas the said (H.) with the assistance of the said (W.) his wife hath for some time past carried on the trade or business of in or upon the said messuage or tenement and premises comprised in the said in part recited indenture of lease And whereas the said (H.) is possessed of or otherwise entitled to divers household goods furniture and stock in trade And there are divers sums of money due or owing from the said (H.) in his said trade or business of And whereas the said (W.) hath in her custody or power the sum of £ And whereas divers unhappy differences having arisen between the said (H.) and the said (W.) his wife they have mutually agreed henceforth to live separate and apart from each other during the remainder of their joint lives And upon the treaty for such separation it was agreed between the said parties hereto that the said (H.) should relinquish the said trade or business unto or in favour of her the said (W.) and should assign the said messuage or tenement &c. together with all the household goods and furniture pictures debts or sums of money and all things named in the first schedule hereunder written or hereunto annexed unto the said (T.) their executors administrators and assigns In trust for the separate use and benefit of her the said (W.) subject to the payment thereof of the sum of £ as a portion for the daughter of the said (H.) and (W.) his wife

as hereinafter mentioned *And* that in consideration thereof he the said (*H.*) should receive the sum of £ so in the custody or power of the said (*W.*) as aforesaid for his own use and benefit *And* that the several debts and sums of money now due and owing from or by the said (*H.*) mentioned and specified in the second schedule hereunder written or hereunto annexed should be wholly borne and paid by the said (*W.*) *And* that the said (*T.*) should enter into such covenants for the indemnity of the said (*H.*) as are hereinafter contained *Now this Indenture witnesseth That* No. DCXIV.
*Deed of
Separation.*
Testatum.
in pursuance of the said agreement and in consideration of the sum of £ to the said (*H.*) paid by the said (*T.*) at or before the execution of these presents the receipt of which said sum of £ the said (*H.*) doth hereby acknowledge &c. *And also* in consideration of the covenants hereinafter contained on the part of the said (*T.*) He the said (*H.*) *Doth* hereby grant assign and set over unto the said (*T.*) *All that* the said messuage or tenement and all and singular other the premises in the said in part recited indenture of lease mentioned and described together with the same indenture of lease *And also* all and singular the pictures household goods furniture articles and things stock and effects in trade debts and sums of money now belonging due and owing to him the said (*H.*) mentioned and specified in the said first schedule hereunder written or hereunto annexed *And* all the estate of him the said (*H.*) of in and to the said messuages &c. and of in and to the said pictures household goods &c. together with full power and authority to ask demand sue for recover and receive and give effectual receipts and discharges for the said debts and sums of money or any of them in the name or names of the said (*H.*) his executors or administrators *To have and to hold* the said messuage or tenement hereby Habendum.
assigned with the appurtenances unto the said (*T.*) their executors administrators and assigns henceforth for and during all the rest residue and remainder of the said term of years now to come and unexpired *Subject nevertheless* to the payment of the rents and performance of the covenants and agreements in the said hereinbefore in part recited indenture of lease reserved and contained and which on the lessee's or tenant's part and behalf are or ought to be from henceforth paid kept and performed *And also to have hold* receive and take all and singular the said household goods pictures furniture articles and things stock and effects in trade debts and other the premises specified in the said first schedule hereto unto the said (*T.*) their

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*Deed of
Separation.*Declaration of
trusts.Declaration of
trusts as to
daughter's por-
tion.

executors administrators and assigns as and for their own goods and chattels henceforth absolutely But nevertheless upon and for the trusts intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that they the said (T.) or the survivors of them or the executors or administrators of such survivor shall within the space of six calendar months next ensuing the date hereof by with and out of the monies which shall come to their or his hands by virtue of or under these presents or by mortgage sale or other disposition of the said premises levy and raise the sum of £ And shall and do stand possessed thereof *Upon the trusts* and for the intents and purposes hereinafter expressed and declared of and concerning the same and subject to the payment of the said sum of £ *Upon trust* that they the said (T.) and the survivor of them his executors administrators and assigns shall and do stand possessed of and interested in all and singular the premises hereby bargained and sold as aforesaid *In trust* for the only proper and separate use and benefit of the said (W.) her executors and administrators exclusive of him the said (H.) and free from his control restraint interposition debts engagements and incumbrances as fully and effectually to all intents and purposes as if she the said (W.) were sole and unmarried And to be for that purpose assigned ordered and disposed of from time to time as she or they shall think proper And as to for and concerning the said sum of £ so to be levied and raised as aforesaid It is hereby declared and agreed by and between the said parties that they the said (T.) and the survivor of them shall and do upon receipt thereof or of any part thereof or upon the voluntary payment thereof or of any part thereof by her the said (W.) her executors administrators or assigns lay out and invest the same in the public stocks or funds of Great Britain or upon Government or real securities in England or Wales and shall stand possessed of and interested in the said sum of £ and the stocks funds and securities in or upon which the same shall or may be laid out or invested *In trust* for (daughter) the daughter of the said (H.) and (W.) and to be an interest vested in and to be paid or transferred to her at her age of twenty-one years But in case she the said daughter shall happen to die under the age of twenty-one years *Then in trust* for the said (W.) her executors administrators or assigns for her sole and separate use and benefit independent of the said (H.) her husband and not to be subject to his debts control or engagements

And upon further trust that they the said (*T.*) and the survivor &c. shall and do in the meantime until the said daughter shall attain her age of twenty-one years or shall previously die under that age pay the income or the interest dividends and annual produce of the said £ or the stocks funds and securities in or upon which the same shall or may be invested unto the said (*W.*) if she shall so long live and in case of her death then unto the guardian or guardians for the time being of the said daughter to be by the said (*W.*) or such guardian or guardians applied for or towards the maintenance education and support of the said daughter And it is hereby agreed and declared by and between the said parties hereto that the receipt or receipts of the said (*T.*) or the survivor &c. for all or any part of the said sum of £ so directed to be raised as aforesaid shall be a good and effectual release and discharge for the money therein expressed to be received And that after such receipt or receipts shall be given the person or persons to or for whom the same shall be so given shall not be obliged to see to the application or be in anywise answerable for the misapplication or nonapplication of such money or any part thereof *And* in consideration of the premises He the said (*H.*) for himself his heirs executors and administrators doth hereby covenant and agree with the (*T.*) their executors and administrators that the said messuage or tenement household goods furniture pictures stock in trade sum and sums of money and premises hereby assigned *And also* all and every sum and sums of money goods chattels effects and estate whatsoever which shall or may from time to time hereafter be given or bequeathed to or in trust for or be acquired by the said (*W.*) shall be remain and continue to and for the sole and separate use and benefit of her the said (*W.*) as if she were sole and unmarried *And* she the said (*W.*) shall have lawful and absolute power to have hold receive perceive enjoy manage order transfer give alien sell lay out dispose of and appoint the same premises and every part thereof and all the interest dividends proceeds increase and improvement thereof and of every part thereof at her own free will and pleasure without the let hindrance intermeddling denial disturbance control claim or demand of him the said (*H.*) and without having the same subject or liable unto the said (*H.*) or to his debts or incumbrances *And also* that it shall and may be lawful for the said (*W.*) by her last will and testament to give and dispose of all such separate estate as aforesaid unto such person or persons as she shall think fit and

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*Deed of
Separation.*Covenants from
husband.That wife shall
peaceably en-
joy, &c.

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*Deed of
Separation.*

proper notwithstanding her coverture *And also* that he the said (H.) his heirs executors administrators and assigns shall and will permit and suffer the same to be held and enjoyed accordingly *And* at the request costs and charges of any person or persons whom it shall or may concern do any reasonable act or acts assurance or assurances for the ratifying and confirming such last will and testament and all and every the bequests and disposition thereby made *And further* that she the said (W.) shall and may from time to time and at all times hereafter live separate and apart from him the said (H.) in such place or places and in such manner as she shall think fit *And* shall have full and free liberty to go come pass and repass to and from all and every place or places wheresoever she shall think fit to go be or reside without any let hindrance molestation interruption or disturbance of from or by him the said (H.) or by his means or procurement in anywise howsoever *And* that he the said (H.) shall not nor will at any time or times hereafter force or compel nor do nor cause or procure to be done any act matter or thing whatsoever whereby to force or compel the said (W.) his wife to live or cohabit with him the said (H.) nor bring sue or prosecute or cause or procure to be brought sued or prosecuted any action or suit at law or in equity or in the Court for Divorce and Matrimonial Causes against the said (W.) or the said (T.) their executors or administrators or any or either of them or any other person or persons whomsoever for or by reason or on account of his or their receiving entertaining or detaining the said (W.) nor shall or will in anywise hereafter molest or trouble her the said (W.) or cause or procure her to be molested or troubled on account of her not cohabiting with him the said (H.) or by reason of her living with any other person or persons in any place or places or on any account or for any cause or pretext whatsoever (a) *Provided*

Proviso for in-

(a) A covenant in a deed of separation by the husband with a surety that he will not visit the wife without the surety's consent does not contemplate future separation so as to be void as being contrary to public policy, *Webster v. Webster*, 4 De G., M. & G. 437; 22 Law J., Chan. 837. In contemplation of law the legal character of husband and wife continues to exist, notwithstanding any private understanding or agreement to live separate which was not recognized by the law, and covenants of this kind could not be pleaded in the Ecclesiastical Courts in bar to a suit for divorce by reason of adultery, *Barker v. Barker*, 2 Addams, 287; see *Shelford on the Law of Marriage and Divorce*, pp. 417—419. But it appears that the courts of law and equity will give effect to such a covenant. See *Wilson v. Wilson*, 5 H. L. Cas. 40. Although it is questionable whether the Court of Chancery

always and it is hereby declared and agreed by and between the said parties to these presents and every of them that the said separate estate and effects of the said (W.) so assigned or intended so to be for her separate use as aforesaid shall in the first place be liable and subject to the indemnifying of the said (H.) his executors administrators and assigns and his and their lands and tenements goods and chattels of from and against all and every the said debts and sums of money due and owing by the said (H.) and specified in the second schedule hereunder written and of from and against all and all manner of debt or debts whatsoever which the said (W.) shall or may at any time or times hereafter contract with any person or persons whomsoever for her maintenance lodging clothes or otherwise howsoever *And* of from and against all and all manner of actions suits costs charges damages and expenses whatsoever which shall or may be commenced or brought against him the said (H.) his executors administrators or assigns or which he or they or any of them shall or may at any time or times hereafter suffer sustain pay bear expend or be put unto for or by reason or means or on account of any such debt or debts *And* in consideration of the premises they the said (T.) Do hereby for themselves jointly and severally and for their respective heirs executors and administrators covenant promise and agree with and to the said (H.) in manner following (that is to say: *That* she the said (W.) shall and will from time to time and at all times hereafter during the continuance of the said term of _____ years granted by the said in part recited indenture of lease pay the said yearly rent and perform and fulfil all and every the covenants and agreements in the said in part recited indenture of lease contained which from henceforth by and on the part of the lessee are or ought to be paid performed and kept according to the purport true intent and meaning of the said recited indenture *And also* that the said (W.) her executors or administrators shall and will pay satisfy and discharge All and every the debt and debts sum and sums of money mentioned and specified in the said second schedule *And further* that they the said (T.) their heirs executors or administrators or some or one of them shall and will from time to time and at

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*Deed of
Separation.*demnifying
husband, &c.Covenants from
trustees.The wife shall
pay rent and
perform cove-
nants of lease,
&c.

could enforce by injunction a stipulation to live separate, or not to bring a suit for restitution of conjugal rights, though undoubtedly it will enforce stipulations as to an arrangement of property, and as to forbearance from personal molestation. *Ib.* See *Vansittart v. Vansittart*, 2 De G. & J. 255.

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*Deed of
Separation.*Covenants from
husband for
title.Not release
debts, &c.

all times hereafter well and sufficiently save defend keep harmless and indemnified the said (H.) his heirs executors administrators and assigns and his and their lands tenements goods and chattels as well from and against all the said rent and covenants of the said in part recited indenture of lease and the said several debts and sums of money mentioned and specified in the said second schedule as aforesaid as also of and from and against such debts and sums of money which she the said (W.) shall at any time or times whilst she shall live separate and apart from the said (H.) contract or owe to any person or persons whomsoever And the said (H.) doth covenant &c. [*that the lease is a good &c. lease and that trustees shall quietly enjoy free from incumbrances &c.*, see ASSIGNMENTS (*Lease*) *ante*, pp. 390, 391] And further that he the said (H.) or any person or persons by his order or for his use shall not nor will at any time or times hereafter make do commit or suffer any act matter or thing whatsoever whereby any debt or debts sum or sums of money now due and owing to him the said (H.) and hereby assigned or intended so to be shall or may be released compounded or otherwise discharged unless it be with the consent in writing of the said (W.) her executors administrators or assigns nor shall nor will revoke the power and authority hereby granted nor obstruct or hinder the said (T.) or the survivor &c. their or his attorney or attorneys agent or agents nor the said (W.) her executors administrators or assigns in the collecting receiving or recovering the said debts and sums of money And also that the said (H.) his executors and administrators at the request costs and charges of the said (W.) her executors administrators or assigns or of the trustees or trustee for the time being shall and will from time to time and at all times hereafter make do and execute all and every such further and other lawful and reasonable acts deeds assignments and assurances matters and things whatsoever for the further and better assigning and assuring the said leasehold and other premises hereby assigned or intended so to be unto them the said (T.) their executors administrators and assigns upon the trusts and for the intents and purposes hereinbefore expressed and declared of and concerning the same *In witness &c.*

The first schedule to which the above written indenture refers.
The second schedule &c. (*as above.*)



No. DCXV.

No. DCXV.

*Deed of
Separation.**Deed of Separation between Husband and Wife.*

This Indenture made &c. Between (husband) of the first part (wife) the wife of the said (H.) of the second part and (trustees) of the third part Whereas unhappy differences have arisen and do still subsist between the said (H.) and (W.) and by reason of the same they have agreed to live separate and apart from each other and the said (H.) hath agreed to allow and pay the said (W.) one annuity or clear yearly sum of £ as and for her separate maintenance and support during the joint lives of herself and the said (H.) (subject nevertheless to the proviso hereinafter contained) and the said (T.) have agreed to enter into the covenant hereinafter contained *Now this Indenture witnesseth* That in pursuance and performance of the said agreement in this behalf He the said (H.) doth hereby for himself his heirs executors and administrators covenant and agree with the said (T.) their executors and administrators in manner following (that is to say) *That* the said (W.) may from time to time and at all times hereafter live separate and apart from the said (H.) her husband as if she were sole and unmarried *And* that she shall be free from the power and command restraint control authority and government of him the said (H.) and shall and may live and reside in such place or places and in such manner as to her shall from time to time seem meet *And* that he the said (H.) shall not nor will molest or disturb the said (W.) in her person or in her manner of living or in her liberty or freedom of going to or staying in or returning from such place or places as she shall think fit nor at any time or times hereafter require or by any means whatsoever either by taking out any citation or process in the Court for Divorce or Matrimonial Causes or by commencing or instituting any suit whatsoever seek or endeavour to compel her the said (W.) to cohabit or live with him the said (H.) or to compel any restitution of conjugal rights nor shall nor will for that purpose or otherwise use any force violence or restraint to the person of the said (W.) or sue or cause to be sued any person or persons whomsoever for receiving harbouring lodging protecting or entertaining her but that she the said (W.) may in all things live as if she were sole and unmarried without the restraint or correction of the said (H.) or of any other person or persons by

Recital of
agreement for
separation.Husband cove-
nants with
trustees.That wife may
live separate.Nor to molest
wife.Nor take pro-
ceedings for
restitution of
conjugal
rights (a).(a) As to this covenant, see *ante*, p. 1352, n.

No. DCXV.

*Deed of
Separation.*To pay annuity
to wife.

or through his means consent or procurement *And further* that he the said (H.) shall and will yearly and every year during the joint lives of him the said (H.) and (W.) well and truly pay or cause to be paid into the proper hands of the said (W.) to and for her own sole and separate use and benefit or to such person or persons as she in writing signed with her proper hand but not by way of anticipation shall from time to time notwithstanding her coverture direct or appoint one clear annuity or yearly sum of £ of lawful money of Great Britain by four even quarterly payments on the 25th day of March the 24th day of June the 29th day of September and the 25th day of December in every year without any deduction or abatement whatsoever with a proportional sum for the period which shall elapse between the last quarterly day of payment and the day of the decease of such of them the said (H.) and (W.) as shall first die such proportional sum to be payable immediately on such decease and the first payment of the said annuity to begin and be made on the 25th day of March now next ensuing *And* that it shall and may be lawful for the said (W.) by her will or any codicil or codicils thereto or by any writing in the nature of a will or codicil to dispose of all savings of the said annuity in such manner as she shall think proper.

In some cases the following Clauses, within brackets, will be proper.

Wife to have
for her separate
use all jewels,
&c.

[*And also* that it shall and may be lawful for the said (W.) from henceforth to have take and enjoy to her own separate and absolute use notwithstanding her coverture all such jewels plate furniture clothes linen wearing apparel and ornaments articles and things whatsoever as now are or which at any time or times hereafter shall be hers or which she shall save from the provision hereby made for her separate use *And* from time to time by deed or will or from hand to hand to sell give away or dispose of the same *And* that if the said (W.) shall depart this life in the lifetime of the said (H.) he the said (H.) will permit and suffer the last will and testament of the said (W.) or any writing in the nature of or purporting to be her last will and testament and any codicil or codicils thereto to be proved in the Court of Probate by the person or persons to be therein named or appointed the executor or executors of her said will or if such executor or executors shall die in her lifetime or refuse to prove her said will or to act in the executorship thereof or if the said

With power of
disposition.

To permit
wife's will to
be proved.

(W.) shall die intestate as to all or any part of the said premises herein declared or directed to be for her separate use or disposal He the said (H.) shall and will permit administration of the estate and effects of the said (W.) to be taken out by the person or persons who would be entitled thereto if the said (W.) had not married the said (H.) and shall and will permit and suffer the said personal estate and effects of the said (W.) or so much thereof of which she shall die intestate to be distributed among the persons and in the manner among whom and in which the same by the Statute for the Distribution of the Effects of Intestates would be distributable if the said (W.) had not married the said (H.) And that all such estates real and personal as during the joint lives of the said (H.) and (W.) his wife shall descend or come to or devolve upon or be given or devised or bequeathed or conveyed to or in trust for her the said (W.) or to or for or upon him the said (H.) in right of the said (W.) his wife shall be holden enjoyed sold given away devised bequeathed and disposed of by the said (W.) her heirs executors administrators and assigns respectively according to the several natures and qualities thereof respectively in such manner as she or they shall think fit without being subject to the debts control claims custody or intermeddling of him the said (H.) as if she the said (W.) had not married the said (H.) And also that he the said (H.) shall and will for that purpose make do and execute all such acts deeds devices and assurances in the law whatsoever for confirming and corroborating these presents and every clause matter or thing herein contained as by the said (T.) their executors administrators or assigns or their or any of their counsel in the law shall be reasonably advised or devised and required] *Provided always* and it is hereby agreed and declared That in case the said (H.) shall at any time or times hereafter be called upon to pay and shall actually pay any debt or debts which the said (W.) hath contracted or shall hereafter contract with any person or persons whomsoever then and in every such case it shall be lawful for the said (H.) to deduct retain and reimburse himself out of the said annuity of £ so hereby made payable to the said (W.) or to the said (T.) as aforesaid the amount of such debt or debts which the said (H.) shall so pay Together with all costs charges and damages which he shall or may pay or sustain on account thereof *Nevertheless* it is hereby declared that this proviso shall not render the said (H.) liable to the

No. DCXV.

Deed of Separation.

In case of intestacy to allow administration by wife's next of kin.

Wife to enjoy all estates acquired by her during the coverture.

Husband to confirm this deed.

Proviso in case of husband paying wife's debts.

No. DCXV.

*Deed of
Separation.*Covenants by
trustees.That wife shall
not molest
husband,or sue for
restitution of
conjugal rights.To indemnify
husband
against wife's
debts.

payment of any of the debts of the said (*W.*) or prejudice his remedy and right of action under the covenant of indemnity of the said (*T.*) hereinafter contained *And this Indenture also witnesseth* That for and in consideration of the covenants and agreements hereinbefore contained on the part and behalf of the said (*H.*) And in consideration of the sum of £ of lawful money of Great Britain by the said (*H.*) to the said (*T.*) in hand well and truly paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) They the said (*T.*) for themselves respectively and their respective heirs executors and administrators do and each of them doth covenant and agree with the said (*H.*) his executors and administrators by these presents in manner following (that is to say) *That* the said (*W.*) shall not at any time hereafter molest or disturb the said (*H.*) or require or by any means whatsoever either by taking out any citation or process in the Court for Divorce and Matrimonial Causes or by commencing or instituting any suit whatsoever or in any other manner endeavour to compel him the said (*H.*) to cohabit or live with her or to compel any restitution of conjugal rights nor seek for or require or by any means whatsoever endeavour to compel the said (*H.*) to allow her more or any further or greater or other alimony or maintenance than the said clear annuity or yearly sum of £ *And further* that they the said (*T.*) respectively and their respective heirs executors or administrators shall and will from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnified the said (*H.*) his heirs executors and administrators and his and their real and personal estates of from and against all and every the debt and debts which the said (*W.*) already hath contracted or shall or may at any time or times hereafter during the said separation contract with any person or persons whomsoever and every part thereof and of and from all actions suits claims and demands whatsoever on account thereof and of from and against all such costs charges losses damages and expenses as shall or may be recovered against or sustained expended or become payable by him them or any of them on account or in respect thereof or by reason of any act or default already committed done or suffered by the said (*W.*) *In witness &c.*

SETTLEMENTS.

1. *Definition.**Usual Limitations in a Settlement.**Must be in Writing.*2. *Who may make a Settlement.**Feme Covert.**Settlements by Infants, when binding.**Infants may, with the approbation of the Court of Chancery, make valid Settlements of their Property upon Marriage.**In case Infant die under Age appointment to be void.**The sanction of the Court of Chancery to be given on Petition.**Not to apply to Males under Twenty, or Females under Seventeen years of Age.**Whether Court to inquire as to the propriety of the Marriage.**How sanction of the Court is to be obtained.**Not Aliens, when.*3. *What may be settled.**Tenants in Tail.**Leaseholds.**Estates Tail.**Choses in Action.*4. *Voluntary Settlements.*5. *Clauses in a Deed of Settlement.**Impeachment of Waste.**Arrears of Pin Money.**Separate use of Wife.**Tenants in Common.**Clause of Survivorship.**Cross Remainders.**Payment of Portions.**Vested Interests.**Power of Appointment.**Partition, Sale and Exchange.**Power of Revocation.**Naked Powers do not survive.**Powers to Trustees to apply Portions, &c.*6. *Stamp Duty.**Amount of the Duty.**Exemptions from the Duty.*

SECT. 1. A settlement is a deed or instrument commonly made previously to or in contemplation of a marriage, the object of which is to provide for the wife and issue of the marriage; if it be framed so as to put it out of the power of the parents to bar their issue, it is called a strict settlement. This is usually done by limiting the estate to the use of the husband for life, remainder to trustees for a term, to secure a jointure for the wife, remainder to other trustees for raising portions for younger children, remainder to the first and other sons in tail general or tail male, remainder to the daughters as tenants in common in tail, with cross remainders between them, remainder to the husband in fee. In settlements not so strict, it is usual to limit the estate to such son or sons of the marriage, as the husband, or both the parents, or the survivor of them, or in some cases as the wife shall by deed or will appoint, and to the heirs of his or her body, or to the heirs general; and in default of such appointment, to the first and other sons in tail male in the usual manner, or in tail general, or to all the children as tenants in common in fee or in tail, with cross remainders between them. In settlements of this kind, powers are usually inserted for granting leases for sale and exchange, and

Definition.

Usual limitations in a settlement.

Settlements.

Must be in
writing.

various other powers are often required to meet the particular circumstances of the case and the intentions of the parties.

By the 29 Car. 2, c. 3, s. 4, no action shall be brought to charge any person upon any agreement made upon consideration of marriage, unless there be some memorandum or note thereof in writing, signed by the party to be charged therewith, or by some other person thereunto lawfully authorized; but it has been held, that a verbal promise before marriage, which has been prevented by fraud from being reduced into writing, is a sufficient consideration to support a settlement agreeably to it after marriage, *Dundas v. Dutens*, 1 Ves. jun. 196; *Shaw v. Jakeman*, 4 East, 201; 2 Sugd. on Powers, 229—232, 7th ed. Prior to his marriage, a husband entered into a parol contract to settle his intended wife's property. The property was not settled until after the marriage; it was held, that the ante-nuptial parol contract was inoperative under the Statute of Frauds; and that the marriage was not a part performance that the post-nuptial settlement was voluntary, and the husband being greatly indebted at the time, that the settlement was void as against the husband's creditors, *Warden v. Jones*, 23 Beav. 487. As to articles of agreement before marriage, see *ante*, pp. 116, 117, and Form No. LXX.

Who may make
a settlement.
Feme covert.

2. Any one who is able to sell or dispose of his property may make a settlement of it; so a *feme covert* may likewise make a settlement under a power, or of property which she possesses, to her own separate use. The stock in trade and effects of a woman may, on her marriage, be vested in trustees with the consent of her intended husband, so as to enable her to carry on a separate business, *Jarman v. Wolloton*, 3 T. R. 618; *Slaving v. Style*, 3 P. Wms. 337; *Dean v. Brown*, 5 B. & C. 336. See 2 Bright's ed. Roper on Husband and Wife, pp. 293, 301.

Settlements by
infants, when
binding.

The general personal estate of a female infant is bound by a settlement made on her marriage, *Hansen v. Miller*, 14 Sim. 22, because such personal estate becomes by the marriage the absolute property of the husband, and the settlement is in effect his settlement and not hers. Although the settlement of a reversionary interest of a female infant is not binding on her right by survivorship, still she may when discoverd adopt it, if for her benefit, *Ashton v. McDougall*, 5 Beav. 56. It was established before the Act 18 & 19 Vict. c. 43, that the *real estate* of a female infant is not bound by the settlement on her marriage, because her real estate does not by the marriage become the absolute property of the husband, although by the marriage he takes a limited interest in it, *Simson v. Jones*, 2 Russ. & M. 376; *Pimm v. Insall*, 1 Hall & T. 487; 1 Mac. & G. 444.

It is well settled that parents and guardians have no power to bind the real estates of their infant wards by settlement made upon their marriages, *Salisbury v. Bagot*, 2 Swanst. 603; *Field v. Moore*, 7 De G., M. & G. 706; *Clough v. Clough*, 5 Ves. 710; *Milner v. Harewood*, 18 Ves. 259. A settlement made during a lady's infancy was

held inoperative as regarded her real estate only and she and her heirs were held not bound to elect either to give effect to the settlement as to the real estate or to abandon benefits in personal estate conferred on her by the settlement, *Campbell v. Ingilby*, 21 Beav. 567; 2 Jur., N. S. 410; 25 L. J., Ch. 761; affirmed on appeal, 26 L. J., Ch. 654. On the marriage of a ward of court, the court will compel the settlement of her real estate as directed by its order, but if this has not been done in the lifetime of the parties themselves in a manner binding at law, the heir-at-law is not bound, *Field v. Moore*, 19 Beav. 176. Before the Act 18 & 19 Vict. c. 43, when a lady married, being an infant at the time, whether she was or was not a ward of court, no deed executed at that time can bind her, although the deed, if executed by the husband, will be binding upon him, *Cave v. Cave*, 15 Beav. 230. If the female, when of age, does not choose to accede to the settlement, the husband will not be permitted to aid her in defeating it, *Randal v. Willis*, 5 Ves. 261, since it is his contract, nor is her act during coverture effectual for that purpose, *Durnford v. Lane*, 1 Br. C. C. 106, 115; *Milner v. Lord Harewood*, 18 Ves. 275, except as to her separate estate.

The statute 18 & 19 Vict. c. 43, after reciting that great inconvenience and disadvantages arise in consequence of persons who marry during minority being incapable of making binding settlements of their property, enacted as follows:

I. From and after the 2nd July, 1855, it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement or contract for a settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder or expectancy; and every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years; provided always, that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

Infants may, with the approbation of the Court of Chancery, make valid settlements or contracts for settlements of their real and personal estate upon marriage.

II. Provided always, that in case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant in tail under the provisions of this act, and such infant shall afterwards die under age, such appointment or disentailing assurance shall thereupon become absolutely void.

In case infant die under age, appointment, &c. to be void.

III. The sanction of the Court of Chancery to any such settlement

The sanction of

Settlements.
the Court of
Chancery to be
given upon
petition.

or contract for a settlement may be given, upon petition presented by the infant or his or her guardian, in a summary way, without the institution of a suit; and if there be no guardian, the court may require a guardian to be appointed or not, as it shall think fit; and the court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

Not to apply to
males under
twenty or fe-
males under
seventeen years
of age.

Whether Court
to inquire as to
propriety of
marriage.

IV. Provided always, that nothing in this act contained shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years.

On a petition by a female infant under this act, praying a reference to approve of a proper settlement, and stating that the intended marriage had the sanction and approbation of the infant's father, the Lord Chancellor made the order without directing any inquiry as to the propriety of the marriage, *In re Dalton*, 6 De G., M. & G. 201; 2 Jur., N. S. 1077; 25 L. J., Ch. 75. The provisions of the act do not impose on the court any other duty than that of looking to the propriety of the settlement, though this may sometimes lead to an inquiry as to all the circumstances connected with the marriage, *Ib.* It is still undecided, notwithstanding the above case, whether on the petition of an infant under the above act, praying a reference to approve of a proper settlement of the infant's property, that statute has relieved the court from inquiring into the propriety of the proposed marriage. But the court will make the reference where there is proper evidence of the propriety of the proposed marriage, *In re Strong*, 2 Jur., N. S. 1241; 26 Law J., Ch. 64. Upon an order of reference to chambers, to approve of a settlement under the above act, it is open to the court to inquire into the propriety of the contemplated marriage, *Ex parte Dalton*, 3 Sm. & G. 331.

How sanction
of Court to be
obtained.

Upon applications to obtain the sanction of the Court to infants making settlements on marriage under the Act of 18 & 19 Vict. c. 43, evidence is to be produced to show—

1. The age of the infant.
 2. Whether the infant has any parents or guardians.
 3. With whom or under whose care the infant is living, and if the infant has no parents or guardians what near relations the infant has.
 4. The rank and position in life of the infant and parents.
 5. What the infant's property and fortune consists of.
 6. The age, rank and position in life of the person to whom the infant is about to be married.
 7. What property, fortune and income such person has.
 8. The fitness of the proposed trustees, and their consent to act.
- The proposals for the settlement of the property of the infant, and

of the person to whom such infant is proposed to be married, are to be submitted to the judge.—*Regulations of business at Judges' Chambers in Chancery*, 8th August, 1857. No. 20. Settlements.

The policy of the law prohibits aliens from acquiring real estates for their own use without the licence of the Crown, for if an alien purchases any estate of freehold, whether in his own name or in the name of a trustee, the Crown, upon office found, may claim it, Co. Litt. 2b; 32 Hen. 8, c. 16, s. 13. It is therefore evident that an alien cannot make a valid settlement of real property unless it has been purchased with the Crown's licence. Aliens can hold lands and houses for residence, or for trade for any term not exceeding twenty-one years, 7 & 8 Vict. c. 66, s. 5, *ante*, p. 1023. Aliens of a friendly state may hold every species of personal property except chattels real, *Ib.* s. 4. There is no law prohibiting an alien from making a settlement of his personal estate. Aliens.

An alien who has been naturalized is competent to hold real estate, whether purchased before or after his naturalization, and consequently may settle them. A denizen may hold real estate purchased after his denization, and real estate previously purchased, if confirmed to him, before office found, by the letters of denization, and consequently may settle such estate.

3. Every species of property, personal and real, may be the subject of a settlement, whether the interests therein be absolute or partial, as estates in fee simple, or years, for life, in possession, reversion, remainder or contingency; and whether held in severalty, joint tenancy, or in common, will make no difference. Such interests, whether legal or equitable, are equally the subjects of settlement. Contingent and other like interests and rights of entry being now made alienable by deed, may be the subject of settlements, 8 & 9 Vict. c. 106, s. 6; see *ante*, p. 1325. And independently of that act, such interests may be bound *in equity* by settlements or articles entered into for a valuable consideration, *Kempland v. Courtney*, 2 Freem. 250; *Theobalds v. Duffey*, 2 P. Wms. 608. What may be settled.

Tenants in tail, whether in possession or remainder, in making settlements, must of course comply with the provisions of the Act 3 & 4 Will. 4, c. 74, as no disposition by a tenant in tail resting only in contract, either expressed or implied, or otherwise, and whether supported by a valuable consideration or not, will be of any force at law or in equity under that act, notwithstanding such disposition may be evidenced by deed, 3 & 4 Will. 4, c. 74, s. 40; see *ante*, pp. 910—939. Tenants in tail.

In the settlement of renewable leaseholds, there should be a power authorizing the trustees from time to time to renew the leases, and for that purpose to raise money by mortgage. But particular care should be taken to insert in all settlements of this nature, such provisions as Leaseholds.

- Settlements.* will free the trustees from personal liability for an omission to renew unless it happens by a defined neglect or default, as without such a provision the trustees neglecting to renew will be considered as answerable for it, as for a breach of trust, *Lord Mountfort v. Lord Cadogan*, 17 Ves. 485; *Bennett v. Colley*, 5 Sim. 181; 2 My. & K. 225; see Tudor's L. C. on Real Prop., pp. 55—59.
- Estates tail.* By the 11 Hen. 7, c. 20, the alienation of estates *ex provisione viri* was prohibited, but that act is now repealed except as to lands comprised in any settlement made before the 28th of August, 1833, 3 & 4 Will. 4, c. 74, s. 17. By the 34 & 35 Hen. 8, c. 20, the alienation of estates tail of the gift of the Crown was prohibited. And the power of disposition given to tenants in tail by the Act 3 & 4 Will. 4, c. 74, does not extend to the tenants of estates tail, who by the Act 34 & 35 Hen. 8, c. 20, or any other act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct, 3 & 4 Will. 4, c. 74, s. 18; see Shelford's Real Prop. Stat., pp. 326—328, 6th ed.
- Choses in action.* Although choses in action as money secured upon bonds, judgments, &c., cannot be assigned at law, such interests may be assigned in equity, and settled with nearly, if not with quite, as much security, if proper notice of the assignment is given, as if they were actually assignable at law. See *ante*, pp. 344—346.
- Voluntary settlements.* 4. Settlements in consideration of an intended marriage have always been held to be within the proviso in the 13 Eliz. c. 5, and 27 Eliz. c. 4, in favour of conveyances made *bonâ fide*, and upon valuable consideration, *Terry v. Terry*, Prec. Ch. 275. But a settlement executed after marriage, unless in pursuance of a bond or agreement entered into before marriage, or in some few other very particular cases, is deemed fraudulent against such persons as were creditors at the time the settlement was made, see Sugd. on Powers, pp. 231, 232, 7th ed., *ante*, p. 1360.
- Clauses in a deed of settlement.*
Impeachment of waste. 5. The clauses proper to be inserted in deeds of settlement vary according to the nature of the property and the intentions of the parties. The clause usually inserted in a deed of settlement, "without impeachment of waste," will not enable a tenant for life to cut down timber trees planted or growing for ornament, *Burgess v. Lamb*, 16 Ves. 174.
- Where in an instrument making a person tenant for life, a clause is inserted that he is to be *without impeachment of waste*, he may fell timber, open new mines or pits, *Lewis Bowles' case*, Co. Litt. 220 a; 11 Co. 79 b, and will have full property in the produce, as will also be the case where timber trees or timber, parcel of a house, are blown down; his interest, however, does not arise until the severance takes place, *Anon.* Mos. 237; *Pyne v. Dor*, 1 T. R. 55; *Wolf v. Hill*, *Bridges v. Stephens*, 2 Swaust. 149, n, 150; *Williams v. Williams*,

15 Ves. 425. If, however, the severance of timber takes place during the existence of a prior limited interest, the tenant for life, without impeachment of waste, could not maintain trover, inasmuch as it would vest immediately in the owner of the inheritance, 1 Ves. jun. 484. This clause may be restricted by exceptions, "except in houses," "voluntary waste in houses only excepted," 1 Ves. 265; and as in *Garth v. Cotton*, Dick. 183; 1 L. Cas. Eq. p. 451, "voluntary waste excepted," which would in fact only excuse permissive waste.

The words, "without impeachment of waste farther than wilful waste," were held sufficient to give the tenant for life the interest of money arising from the sale of decaying timber fallen by the order of the Court of Chancery, *Wickham v. Wickham*, 19 Ves. 419.

So the exemption from liability to waste annexed to a life estate, may be made subordinate to a discretionary power in trustees to fell timber, and the Court of Chancery will by injunction restrain the tenant for life from cutting timber, so as to interfere with the discretionary power of the trustees, provided there was no *mala fides*, nor any wanton or unreasonable exercise of their discretion, *Kekerick v. Marker*, 3 Mac. & G. 311; and see *Briggs v. Earl of Orford*, 5 De Gex & Sm. 156; Tudor's L. C. Real Prop., pp. 67, 68.

As a rule, an annuity to a wife by way of what is termed pin-money, will not be suffered to run in arrear beyond one year; except where the wife lives separate from her husband; or, as it should seem under other circumstances, where length of time was not considered to run, *Aston v. Aston*, 1 Ves. 266. By acquiescence, a wife may forfeit her claim to all arrears of pin-money, except for the last year, *Thrupp v. Harman*, 3 M. & K. 513; and even where a wife has been incapable, by reason of lunacy, of expressing any dissent, it has been held that her executors were not entitled to recover her arrears, on the ground principally that the husband had expended a competent sum on her maintenance suitably to her rank, *Howard v. Digby*, 8 Bligh, N. S. 225; 2 Cl. & Fin. 634; reversing the decision of Shadwell, V. C., in *Digby v. Howard*, 4 Sim. 588. See Shelford on the Law of Lunatics, pp. 293—296, 2nd ed.

Arrears of pin-money.

Where personal property is settled to the separate use of a married woman without any restraint on her alienation, she may not only receive and apply the income to her separate use, but may dispose of the capital or corpus, although the income is directed to be paid into her own proper hands and upon her receipt alone, *Acton v. White*, 1 Sim. & Stu. 429; *Parke v. White*, 11 Ves. 222. If, therefore, it be intended that she shall have no power of disposition, the intention to restrain anticipation must be clearly expressed, *Harrop v. Howard*, 3 Hare, 624. The clause against anticipation may be confined to a particular coverture, *Knight v. Knight*, 6 Sim. 121; *Bradley v. Hughes*, 8 Sim. 149; *Moore v. Morris*, 4 Drew. 33. On the settle-

Separate use of wife.

Settlements.

ment of a ward no clause against anticipation was attached to her separate life estate. She incumbered her interest. It was held, that the settlement could not be rectified to the prejudice of her incumbrancers, although the Court usually directs the introduction of such a clause in settling the property of a ward to her separate use, *Blackie v. Clark*, 15 Beav. 595. Where an estate *in fee simple* is conveyed for the separate use of a married woman, without an express power of appointment reserved to her, she cannot during the coverture dispose of the fee simple without the concurrence of her husband in such an assurance as is required for passing her interest in lands; nor can she, in the absence of an express power, devise such lands during the coverture, *Doe d. Stevens v. Scott*, 1 Moore & P. 317; 4 Bing. 505. See Shelford's Real Prop. Stat. 385—390.

It is to be observed that the act authorizing married women to dispose of reversionary interests in personalty, do not enable them to dispose of any interest in personal estates where they are restrained from alienation, or where it is settled upon them by any settlement or agreement for a settlement made on the occasion of their marriage, 20 & 21 Vict. c. 57, ss. 1, 6. See *ante*, pp. 415, 416.

Tenants in
common.

Although courts of equity do not favour joint-tenancy in the construction of deeds, yet it is prudent to obviate all questions by making the limitation express “to the children,” or “to the daughters as tenants in common,” *Taggart v. Taggart*, 1 Sch. & Lef. 88; but there must be added words of inheritance, as, “to the heirs of the body of,” &c., otherwise the children will take only an estate for life.

Clause of sur-
vivorship.

Where it is the intention, as it generally is when children are intended to be provided with portions, that if more than one of them die without acquiring a vested interest in his share, both the original and accruing share intended for the deceased children, shall survive to the other children, the provisions of survivorship and accruer should be expressly extended to the accruing or surviving shares, as without an expression or manifest implication of such an intention, the share accrued to the deceased child will not accrue to the other children, *Fearne Cont. Rem.* p. 558 n, by Butler.

Cross remain-
ders.

As cross remainders cannot be raised by implication upon the construction of a deed, they must be limited in express terms, *Doe d. Cork v. Cooper*, 1 East, 229; *Doe d. Worsley*, Id. 416.

Payment of
portions.

Where in a settlement there is a provision for raising portions, it is prudent to add that the payment of portions should be postponed until the death of the parents, or one of them, *Codrington v. Lord Foley*, 6 Ves. 364; *Schenck v. Leigh*, 9 Ves. 300. In modern settlements it is usual to insert a clause, that if one of the younger children become the eldest, his share shall go over; but without this clause, equity will consider every child, except the heir, as the younger. See 2 Sugd. Pow. pp. 195, 269, 7th ed. The time for the vesting

Vested inte-
rests.

and payment of portions should be clearly defined. As to trusts for raising portions, see 2 Hayes Conv. p. 61 n. (52), 5th ed.; Coote on Mortgages, Bk. II., Ch. VII., 3rd ed.

Settlements.

A power of appointment to children will not extend to grandchildren, unless the power be extended to them in express terms, and then it should be confined to such as are born in the lifetime of the parents, the settlors, or of the survivor of them.

Power of appointment.

A power to make partition of an estate will not authorize a sale or exchange; and it is not settled that the usual power of sale and exchange will authorize a partition, see *ante*, pp. 1122, 1123. To obviate all questions, it is usual, when the case requires it, to insert an express power to make partition. See *ante*, p. 1231.

Partition, sale and exchange.

A general power of revocation in a settlement will be void against a purchaser, although the power is only conditional, unless where the power is to be exercised with the consent of persons who are not under the control of the settlor, or where the money is to be paid to trustees to be invested in other estates.

Power of revocation.

A naked power will not survive, it must therefore be given to the trustees expressly by the words, "and the survivors and survivor of them and the executors or administrators of such survivor their or his assigns" or "to the trustees or trustee for the time being of the settlement." So trustees are not authorized to do several other things without an express authority to that effect; namely, to apply the interest of portions for the maintenance of younger children, *Farlington v. Green*, 10 Ves. 48; *Errington v. Chapman*, 12 Ves. 20; or to apply any part of the portion of a child for his advancement, *Walker v. Wetherell*, 6 Ves. 473; or change the securities upon which trust monies are placed, *Harrison v. Harrison*, 2 Atk. 121; or to lay out money in a fund which the court does not adopt, *Hancom v. Allen*, 2 Dick. 498; or appoint new trustees, *Buchanan v. Hamilton*, 5 Ves. 721. The Trustee Acts contain ample powers for the appointment of new trustees upon petition to the Court of Chancery. See 13 & 14 Vict. c. 69, 15 & 16 Vict. c. 55; Shelford's Real Prop. Stat. pp. 605—635.

Naked powers do not survive.

Powers to trustees to apply portions, &c.

The following is contained in the schedule to the Act 13 & 14 Vict. c. 97:—

6. SETTLEMENT.—Any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum or sums of money, (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects, or not,) or any definite and certain share or shares in

Stamp duty.

Settlements. any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of *any other* company or corporation, shall be settled or agreed to be settled upon or for the benefit of any person or persons, either in possession or reversion, either absolutely, or for life or other partial interest, or in any other manner whatsoever :

If such sum or sums of money, or the value of such share or shares in all or any of the said stocks or funds, or of such one or more of the said articles as shall be so settled or agreed to be settled, or both such sum or sums of money and the value of one or more of such articles together, shall not exceed in the whole 100*l.* 0 5 0

And if the same shall exceed 100*l.*, then for every 100*l.* and also for any fractional part of 100*l.* 0 5 0

And all deeds or instruments chargeable with the said *ad valorem* duty which also contain any settlement of lands or other property, or contain any other matter or thing besides the settlement of such money or stock, shall be chargeable with such further stamp duty as any separate deed or instrument containing such settlement of lands or other property, or other matter or thing, would have been chargeable with, exclusive of the *progressive* duty :

And where there shall be more than one such deed or instrument for effecting any such settlement as aforesaid, chargeable with any such duty or duties exceeding 1*l.* 15*s.*, one of them only shall be charged with the said *ad valorem* duty ; and also where any settlement shall be made in pursuance of any previous articles chargeable with and which shall have paid any such duty or duties exceeding 1*l.* 15*s.*, such last-mentioned settlement shall not be chargeable with the said *ad valorem* duty ; and the said deeds and instruments respectively not chargeable with the said *ad valorem* duty shall be charged with the duty to which the same may be liable under any more general description in this schedule, or in the schedule annexed to the Act 55 Geo. 3,

c. 184; and on the whole being produced, duly executed and duly stamped, as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Settlements.

And see PROGRESSIVE DUTY, *ante*, p. 887.

The assignment to trustees of a marriage settlement of a policy of insurance effected on the settlor's life for a sum named, and all monies assured or to become payable by or under the policy, is not liable to the *ad valorem* duty under 13 & 14 Vict. c. 97, Sched. "Settlement," as being a deed whereby any definite and certain principal sum of money is settled, *Sanville v. Commissioners of Inland Revenue*, 10 Exch. 159; 23 Law J., Exch. 271.

Bonds and mortgages and other securities, operating as settlements, and chargeable with *ad valorem* duties on bonds or mortgages, are exempt from the settlement duty; also deeds in execution of powers in a previous settlement in favour of special objects of such powers; also deeds merely declaring the trusts of any money or stock pursuant to a previous settlement, or for securing any gifts or dispositions made by any previous settlement, deed or will; also wills and all testamentary dispositions *mortis causâ* of every description, 55 Geo. 3, c. 184, Sched., Part I., tit. "Settlement."

Exemptions
from the duty.

No. DCXVI.

Settlement of Freeholds, Leaseholds, and Copyholds to strict Uses.
(General Precedent.)

No. DCXVI.

Freeholds,
Leaseholds,
and Copyholds.

Obs. As to the nature of a strict settlement, see Pref. sect. 1; as to the stamp, see *ante*, p. 1367.

This Indenture made &c. Between (intended husband) of &c. of the first part (intended wife) daughter of &c. spinster of the second part A. B. of &c. and C. D. of &c. of the third part E. F. of &c. and G. H. of &c. of the fourth part and I. K. of &c. and L. M. of &c. of the fifth part Whereas the said (I. H.) is seised or otherwise well entitled for an estate of inheritance in fee simple of and to the manors lands and other hereditaments hereinafter described and intended to be hereinafter firstly granted with their rights members and appurtenances (subject to the several incumbrances and charges particularly set forth in the first item of the schedule to these presents annexed) And the said (I. H.) is seised or otherwise well entitled for the lives of him the said

Recital of husband being entitled to estates in fee.

Leaseholds for lives.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Copyholds of
inheritance.

Contract for
marriage.

Testatum.

Habendum to
trustees upon
trusts.

(*I. II. and two other persons*) and the lives and life of the survivors and survivor of them of and to the hereditaments hereinafter described and intended to be hereinafter secondly granted with their appurtenances under a lease granted of the same by (*lessor*) bearing date the day of but subject to the rents covenants and agreements in the same indenture reserved and contained and which are or ought henceforth to be paid observed or performed for or in respect of the same premises and also subject to the incumbrances and charges particularly set forth in the second item of the said schedule to these presents annexed *And the said (I. II.) [statement of another similar lease for lives]* *And whereas* the said (*I. II.*) is seised of or otherwise well entitled to him and his heirs according to the custom of the manor of in the said county of by copy of court roll of and to the messuages and other hereditaments hereinafter described and hereinafter covenanted to be surrendered with the appurtenances subject to the incumbrances and charges particularly set forth in the third item of the schedule to these presents annexed *And whereas* a marriage hath been agreed upon and is intended shortly to be solemnized between the said (*I. II.*) and (*I. W.*) *And upon* the treaty for the said marriage it was agreed that the said (*I. II.*) should settle and assure the said freehold and copyhold estates of inheritance and the said estates held by him for lives to the uses upon the trusts and subject to the powers provisoes and declarations hereinafter expressed and contained concerning the same *Now this Indenture witnesseth* That in pursuance of the said agreement and for carrying the same into execution so far as the same relates to the said freehold estates of inheritance and in consideration of the said intended marriage and of the portion or fortune of the said (*I. W.*) He the said (*I. II.*) *Doth* hereby grant and convey unto the said A. B. and C. D. and their heirs and assigns *All those (parcels)* And all and singular [*general words, see ante, p. 1258*] And all the estate &c. *To have and to hold* the said manors messuages farms lands hereditaments and all and singular other the premises hereinbefore granted or intended so to be with their and every of their rights members and appurtenances (but subject and charged as appears in the said first item of the schedule to these presents) unto the said A. B. and C. D. their heirs and assigns for ever To and for the several uses intents and purposes upon the several trusts and with under and subject to the several powers provisoes limitations declarations and agreements hereinafter expressed

and declared of and concerning the same (that is to say) *To the use* of the said (*I. H.*) and his heirs until the said intended marriage shall be had and solemnized and from and after the solemnization thereof to the use of the said E. F. and G. H. their executors administrators and assigns for and during and unto the full end and term of ninety-nine years to commence and be computed from the solemnization of the said intended marriage and fully to be complete and ended without impeachment of waste other than wilful or malicious waste upon the several trusts and to and for the several intents and purposes hereinafter declared and expressed of and concerning the same *And* from and after the expiration or sooner determination of the said term of ninety-nine years and in the meantime subject thereto and to the trusts thereof *To the use* of the said (*I. H.*) and his assigns for and during the term of his natural life without impeachment of waste (*a*) *And* from and after the decease of the said (*I. H.*) *To the use* and intent that the said (*I. W.*) and her assigns if she shall survive the said (*I. H.*) shall and may immediately after his decease out of all and singular the manors messuages or tenements lands hereditaments and premises hereinbefore granted or intended so to be have receive and take for and during the term of her natural life for her jointure and in bar of dower or freebench one annual sum or yearly rent-charge of £ to be yearly issuing and payable out of the same premises and to be paid to the said (*I. W.*) or her assigns by equal quarterly payments on the day of the day of the day of and the day of in every year without any deduction or abatement whatsoever the first quarterly payment of the said annuity or yearly rent-charge of £ to begin and be made on such of the said days or times of payment as shall first happen after the decease of the said (*I. H.*) and a due and proportionate part thereof to be payable and paid for and in respect of so many days as shall or may elapse from the last quarterly day of payment (*b*) next preceding her decease up to the day of her decease *And* to this further use intent and purpose that in case the said annual sum or yearly rent-charge of £ or any part thereof shall happen to be behind or unpaid by the space of twenty-one days next after any one of the said

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

To husband
until marriage.

To trustees for
term of ninety-
nine years.

Then to the use
that wife to
receive annuity
of £ during
her life.

Powers of dis-
tress,

(a) See *ante*, p. 1364, pl. 5.

(b) As to this clause, see ANNUITY, Pref. sect. 4, *ante*, p. 180.

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*Freeholds,
 Leaseholds,
 and Copyholds.*

and entry.

days of payment whereon the same ought to be paid as aforesaid Then and so often and from time to time it shall and may be lawful for the said (I. W.) and her assigns into and upon the same premises out of which the said annual sum or yearly rent-charge of £ is to be issuing as aforesaid and every of them or any part thereof to enter and distrain and the distress and distresses then and there found to take lead drive carry away and impound and in pound to detain and otherwise to demean therein according to law until the said annuity or yearly rent-charge and every part thereof so in arrear and unpaid and all costs and damages sustained by reason of the nonpayment thereof contrary to the true intent and meaning of these presents shall be fully satisfied and paid. *And to this further use* intent and purpose that in case the said annuity or yearly rent-charge or sum of £ or any part thereof shall be behind or unpaid by the space of forty days next after any of the said days of payment whereon the same ought to be paid as aforesaid Then and in such case (although no legal demand thereof shall have been made) it shall be lawful for the said (I. W.) and her assigns into the said premises charged and chargeable therewith or into any part thereof in the name of the whole to enter and to receive and take the rents issues and profits thereof to her and their own proper use until thereby or therewith or otherwise the said (I. W.) or her assigns shall be fully satisfied and paid all the arrears of the said annuity or yearly rent-charge of £ and all payments which during such possession shall accrue or grow due together with all costs charges damages and expenses that she or they shall be put unto or sustain by reason of the nonpayment thereof contrary to the true intent and meaning of these presents and that such possession when taken shall be without impeachment of waste other than wilful and malicious waste *And as to for and concerning* the said manors messuages farms lands and other hereditaments hereinbefore granted or intended so to be with their appurtenances from and after the decease of the said (I. H.) subject to and charged and chargeable with the said annuity or yearly rent-charge of £ and to the powers and remedies hereby given and provided for the recovery thereof *To the use* of the said I. K. and L. M. their executors administrators and assigns for and during and unto the full end and term of 1000 years from thence next ensuing without impeachment of waste but upon the trusts and to and for the ends intents and purposes and subject to the pro-

To trustees for
 1000 years
 upon trusts fol-
 lowing.

visoes hereinafter declared of or concerning the same *And* from and after the expiration or sooner determination of the said term of 1000 years and also in the meantime subject thereto and to the trusts thereof *To the use* of the first and every other son of the body of the said (*I. H.*) by the said (*I. W.*) his intended wife lawfully begotten severally and successively and in remainder one after another in order and course as they respectively shall be in priority of birth and seniority of age and the heirs male of the body and respective bodies of all and every such sons and son issuing the elder of such sons and the heirs male of the body of such elder son being always preferred and to take before the younger of such sons and the heirs male of the body and respective bodies of such younger son and sons issuing *And* for default of such issue *To the use* of all and every the daughters and daughter of the said (*I. H.*) on the body of the said (*I. W.*) his intended wife to be begotten equally to be divided between or amongst them share and share alike as tenants in common and not as joint tenants and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing *And* in case there shall be a failure of issue of any one or more such daughters then as well as to the original share or shares of as the share or shares surviving or accruing to such last-mentioned daughter or daughters or her or their issue under this present limitation or provision to the use of all and every other the daughter and daughters of the said (*I. H.*) on the body of the said (*I. W.*) to be begotten equally to be divided between or amongst them if more than one share and share alike as tenants in common and not as joint tenants and of the several and respective heirs of their bodies issuing *And* in case all such daughters but one shall happen to die without issue or if there shall be but one such daughter then to the use of such one daughter and of the heirs of her body lawfully issuing and for default of such issue to the use of him the said (*I. H.*) his heirs and assigns for ever *And* it is hereby declared that the said term of ninety-nine years is hereinbefore limited to the said E. F. and G. H. their executors administrators and assigns upon the trusts and to and for the intents and purposes and under and subject to the provisos and agreements hereinafter declared or expressed concerning the same (that is to say) *Upon trust* that they the said E. F. and G. H. and the survivor of them his executors and administrators their or his assigns do

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Remainder to
the first and
other sons in
tail male.

Remainder to
daughters in
tail general.

With cross
remainders.

Trusts of the
term of ninety-
nine years.

No. DCXVI.

Freeholds,
Leaseholds,
and Copyholds.To raise an
annual sum of
£ for wife
by way of pin-
money.To intended
wife for her
separate use,
exclusively of
husband.Without power
of anticipation.And shall per-
mit the re-
mainderman to
receive the sur-
plus income.Proviso for ces-
sor of term
when the trusts
and expenses
are satisfied.

and shall yearly and every year during the joint natural lives of the said (*I. H.*) and the said (*I. W.*) by with and out of the annual income and profits of the said manors and other hereditaments comprised in the same term or of a competent part or parts thereof or by mortgage sale or demise thereof or of some part thereof for the whole or any part of the same term or by bringing actions against the tenants or occupiers of the same premises or any part thereof for the recovery of the rents and profits or by all or any of the aforesaid or by any other lawful ways or means whatsoever levy and raise the annual sum of £ of lawful money free and clear from all deductions for present or future taxes charges assessments or impositions or any other matter cause or thing whatsoever and do and shall pay apply and dispose of the same by quarterly payments at the days of payment hereinbefore mentioned by even and equal portions the first quarterly payment thereof to be made on such of the said days as shall next happen after the solemnization of the said intended marriage into the hands of the said (*I. W.*) for her sole and separate use and benefit independently and exclusively of the said (*I. H.*) and without being in anywise subject to his debts control interference or engagements and her receipts notwithstanding her coverture shall be from time to time discharges for the same *But* so nevertheless that she shall not have power to dispose of or affect the same or any part thereof by any sale mortgage or charge or otherwise in the way of anticipation and that no other receipts but receipts given by her for sums then become due shall be discharges for the same *And* upon this further trust that they the said trustees and trustee for the time being of the same term shall permit and suffer the person or persons who under the limitations aforesaid shall for the time being be entitled to the reversion or remainder of the hereditaments and premises comprised in the said term immediately expectant upon the determination thereof from time to time to receive and take the whole or any part as the case may be of the rents issues and profits of the hereditaments and premises comprised in the same term which shall not be wanted for the purposes for which the same term is hereby created for his her and their own use and benefit *Provided always* that when the trusts hereinbefore declared of and concerning the said last-mentioned term shall have been fully performed and satisfied or shall have become unnecessary or incapable of taking effect and the said trustees and trustee thereof and each of them their and each of their

executors administrators and assigns shall have been fully reimbursed and satisfied all costs charges and expenses (if any) occasioned by or relating to the trusts hereby reposed in them which they are hereby authorized and empowered to levy and raise by all or any of the ways and means aforesaid or by any other reasonable ways and means and to retain accordingly the same term (subject and without prejudice to any disposition which shall have been made of the premises comprised therein or any part thereof in pursuance of the trusts aforesaid) shall absolutely cease and determine *And* it is hereby declared that the said term of 1000 years is hereinbefore limited to the said I. K. and L. M. their executors administrators and assigns as aforesaid upon the several trusts and to and for the several intents and purposes and under and subject to the provisos hereinafter declared or expressed of or concerning the same (that is to say) *In trust* in the first place for the further and better securing to the said (*I. W.*) and her assigns for her life in case she shall happen to survive the said (*I. H.*) the said annuity or yearly rent-charge of £ hereinbefore made payable to her for her jointure clear of all charges and without any deduction or abatement whatsoever as the same shall become due and payable *And* for that end and purpose in case the said annuity or yearly rent-charge of £ or any part thereof shall at any time or times be behind or unpaid for the space of forty days next after any of the days or times at or upon which the same is hereinbefore made payable as aforesaid then and in such case and so often as the same shall happen it shall be lawful for the said I. K. and L. M. and the survivor of them his executors and administrators their or his assigns and he and they are hereby expressly authorized from time to time to enter into and upon all and every or any part or parts of the said manors and other hereditaments hereinbefore granted and to receive and take the rents issues and profits thereof and by and out of the same rents issues and profits or by mortgage or sale of all or any part of the said manors &c. or by bringing actions against the tenants or occupiers of the same premises or any part thereof for the recovery of the rents then due and in arrear or by all or any of the said ways and means or any other lawful ways and means whatsoever to levy raise and pay such arrears of the said annuity or yearly rent-charge of £ as shall be so from time to time due and unpaid to her the said (*I. W.*) or her assigns together with all such costs charges damages and

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Declaration of
trusts of 1000
years' term,

in trust for
better securing
intended wife's
jointure.

To raise money
for payment of
arrears.

No. DCXVI. expenses as she the said (*I. W.*) her executors administrators or assigns or her said trustees or any of them shall or may expend sustain or be put to by reason of the nonpayment of the said annuity or yearly rent-charge of £ or any part thereof or otherwise in execution of the said trusts and to pay the overplus (if any) of the monies levied and raised by the ways and means last aforesaid to the person or persons who under the limitations aforesaid shall for the time being be entitled to the remainder or reversion of the hereditaments comprised in the same term expectant upon the determination thereof *And* upon further trust in case there shall be any child or children of the said (*I. H.*) on the body of the said (*I. W.*) lawfully to be begotten (other than or not being an eldest or only son for the time being entitled under the limitations hereinbefore contained to the said manors messuages lands and other hereditaments for an estate in tail male in possession or in remainder immediately expectant upon the decease of the said (*I. H.*)) then and in such case the said *I. K.* and *L. M.* and the survivor of them and the executors administrators and assigns of such survivor do and shall either in the lifetime of the said (*I. H.*) with his consent in writing or else not till after his decease (but subject and without prejudice to the raising and paying the said annuity or yearly rent-charge of £ hereinbefore limited in use to the said (*I. W.*) for her life and to such powers and remedies for recovering the same as aforesaid) by mortgaging selling or otherwise disposing of the said manors messuages lands and other hereditaments or any of them or any part thereof for the whole or any part of the said term of 1000 years or by or with and out of the rents issues and profits of the same manors messuages lands and other hereditaments or any of them or by bringing actions against the tenants or occupiers of the same premises or any of them for the rents then in arrear or by more than one or by all of the aforesaid ways and means or by any other reasonable ways or means levy and raise for the portion or portions of such child or children (other than and not being an eldest or only son so for the time being entitled as aforesaid) the sum or sums of money hereinafter mentioned (that is to say) *If* there shall be but one such child not being an eldest or only son so for the time being entitled as aforesaid the sum of £ of lawful money of Great Britain for the portion of such one child to become an interest vested in and to be paid to such one child whether a son or a

*Freeholds,
Leaseholds,
and Copyholds.*

To raise portions for younger children of the marriage.

If one child, £ to be vested and paid as intended husband shall by deed or will appoint.

daughter on or at such age day or time as the said (*I. H.*) by any deed or writing with or without power of revocation and new appointment to be sealed and delivered by him in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or any codicil or codicils thereto to be by him signed in the presence of and attested by two or more credible witnesses shall direct or appoint *And* in default of such direction or appointment and so far as any such direction or appointment shall not extend to be an interest vested in such child being a younger son at his age of twenty-one years or being a daughter at her age of twenty-one years or day of marriage which shall first happen and to be paid to him or her on or at the same age or time if the same shall happen after the decease of the said (*I. H.*) but if the same shall happen in the lifetime of the said (*I. H.*) then immediately after the decease of the said (*I. H.*) unless he shall signify his consent in writing under his hand and seal that the same shall be raised and paid in his lifetime *And* if there shall be two children of the said (*I. H.*) on the body of the said (*I. W.*) lawfully begotten and no more (other than and not being an eldest or only son so for the time being entitled as aforesaid) then the sum of £ of like lawful money for the portions of such two children *And* if there shall be three or more children of the said (*I. H.*) by the said (*I. W.*) (other than and not being an eldest or only son so for the time being entitled as aforesaid) then the sum of £ of like lawful money for the portions of such three or more children *The* said sum of £ or £ as the event shall happen to be shared and divided between or amongst the children respectively entitled thereto in such parts shares and proportions and to be interests vested in and to be paid to them respectively on or at such ages days or times and to be subject to such annual sum and sums of money and limitations over for the benefit of some one or more such child or children (other than and not being an eldest or only son so for the time being entitled as aforesaid) as the said (*I. H.*) by any deed or deeds instrument or instruments in writing with or without power of revocation and new appointment to be by him sealed and delivered in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or any codicil or codicils thereto to be by him signed in the presence of and attested by two or more credible witnesses shall from time to time direct or appoint *And* in default of such direction or appointment or so far as any

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

In default of appointment, to be vested in son at twenty-one, or daughter at twenty-one or marriage.

If two younger children, £

If three or more younger children, £

Such sums to be paid as intended husband shall by deed or will appoint.

In default of

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*appointment, to
sons at twenty-
one and to
daughters at
twenty-one or
marriage.Appointed
shares to be
brought into
hotchpot.Clause of sur-
vivorship and
accruer.

such direction or appointment shall not extend the said sum of £ or £ (as the event shall happen) to be paid to and divided between or among the children entitled thereto respectively in equal shares and proportions the share or shares of such of them as shall be a son or sons to be an interest vested or interests vested in him or them respectively at his or their age or respective ages of twenty-one years. And the share or shares of such of them as shall be a daughter or daughters to be an interest vested or interests vested in her or them respectively at her or their age or respective ages of twenty-one years or day or respective days of marriage which shall first happen and to be paid to him her or them respectively on or at the same ages days or times respectively if the same respectively shall happen after the decease of the said (*I. H.*) but if the same respectively shall happen in the lifetime of the said (*I. H.*) then immediately after the decease of the said (*I. H.*) unless he shall signify his consent in writing under his hand and seal that the same or any of them shall be raised and paid in his lifetime. *Provided always* and it is hereby agreed and declared between and by the parties to these presents That in default of any such direction or appointment as aforesaid to the contrary no child or children taking any part of the sum of £ or £ (as the event shall happen) under or by virtue of any direction or appointment to be made by the said (*I. H.*) in pursuance of the power or authority hereinbefore given to him for that purpose shall have or be entitled to any further or other share of or in that part of the said sum of £ or £ (as the event shall happen) of which no such direction or appointment shall be made without bringing his her or their appointed share or shares into hotchpot and accounting for the same accordingly. *Provided also* and it is hereby further agreed and declared between and by the parties to these presents That if there shall be more than one such child for whom portions are intended to be hereby provided as aforesaid and any of them being a son or sons shall depart this life or become an eldest or only son so for the time being entitled as aforesaid under the age of twenty-one years or being a daughter or daughters shall depart this life under the age of twenty-one years and without being or having been married then and in case no such direction or appointment as aforesaid shall be made by the said (*I. H.*) to the contrary as well the share intended to be hereby originally provided for as the share or shares by virtue of this present

clause or proviso surviving or accruing to each such son so dying or becoming an eldest or only son so for the time being entitled as aforesaid and each such daughter so dying as aforesaid or so much thereof as shall not have been raised or paid or applied for the preferment and advancement in the world of any such son or sons by virtue and in pursuance of the power or authority hereinafter in that behalf contained shall go accrue and belong to the survivor or survivors others or other of such children (not being an eldest or only son so for the time being entitled as aforesaid) and shall vest in and be paid to him her or them (if more than one) in equal parts shares and proportions at such and the same time or times and in such and the same manner as hereinbefore declared and expressed touching and concerning his her or their original portion or portions or as near thereto as circumstances will admit but so nevertheless that no one child shall by survivorship or otherwise have or be entitled to more than the sum of £ for his or her portion nor any two children to more than the sum of £ between them for their portions And upon this further trust That they the said I. K. and L. M. and the survivor of them and the executors or administrators of such survivor do and shall after the decease of the said (I. H.) (subject and without prejudice as aforesaid) by and out of the rents issues and profits of the said manors messuages lands and other hereditaments comprised in the said term of 1000 years or any part or parts thereof levy and raise for the maintenance and education of the child or children for the time being of the said (I. H.) and (I. W.) for whom a portion or portions is or are intended to be hereby provided as aforesaid in the meantime and until his her or their portion or respective portions shall become payable such yearly sum or sums of money not exceeding what the interest of the expectant portion or portions intended to be hereby provided for such child or children respectively would amount to after the rate of 5*l.* for every 100*l.* by the year as the said (I. H.) by any deed or deeds instrument or instruments in writing with or without power of revocation to be by him sealed and delivered in the presence of and attested by two or more credible witnesses or by his last will and testament in writing or any codicil or codicils thereto to be by him signed in the presence of and attested by two or more credible witnesses shall from time to time direct or appoint and in default of any such direction or appointment and so far as any such direction or appointment shall not extend such

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Provision for
maintenance.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Power to raise
money for ad-
vancement of
younger sons.

yearly sum or sums of money as the said I. K. and L. M. or the survivor of them or the executors or administrators of such survivor shall for that purpose deem sufficient and proper not exceeding the amount of such interest as aforesaid the said yearly sum or sums of money for maintenance to be free and clear of and from all deductions for taxes or otherwise and to be raised and paid in such manner and at such times as to them the said I. K. and L. M. or the survivor of them or the executors or administrators of such survivor shall in that behalf seem meet *And* it is hereby declared that they or he may so pay and apply the same to the guardian or guardians of such child or children without seeing to the application thereof *Provided always* and it is hereby agreed and declared between and by the parties to these presents That it shall and may be lawful to and for the said I. K. and L. M. and the survivor of them and the executors or administrators of such survivor at any time or times during the life of the said (I. H.) with his consent and approbation signified by some deed or deeds instrument or instruments in writing to be by him sealed and delivered in the presence of and attested by two or more credible witnesses *And* after his decease then of the proper authority of the said I. K. and L. M. or the survivor of them or the executors or administrators of such survivor to levy and raise by the ways and means aforesaid or any of them for the advancement or preferment in the world of any son or sons of the said (I. H.) on the body of the said (I. W.) lawfully to be begotten (other than and not being an eldest or only son so for the time being entitled as aforesaid) any sum or sums of money not exceeding in the whole for any one such son one moiety or equal half part or share of his expectant portion under the trusts hereinbefore declared (which same sum or sums of money shall be considered and taken to be in part of the portion or fortune provided or intended to be provided for such son or sons under or by virtue of the trusts of the said term of 1000 years) and to pay and apply the money so to be raised for the placing out preferment advancement or benefit of such son or sons as the said (I. H.) shall during his life think fit or as after his decease they the said I. K. and L. M. or the survivor of them or the executors or administrators of such survivor shall in their or his discretion think fit notwithstanding the portion or portions of such son or sons shall not then have become vested or payable *Provided always* and it is

No sale or

hereby further agreed and declared between and by the parties to these presents that the said I. K. and L. M. or the survivor of them or the executors or administrators of such survivor shall not sell mortgage or demise any part or parts of the said manors messuages lands and other hereditaments comprised in the said term of 1000 years until one of the said portions or some part thereof shall become payable by virtue of and under the trusts or powers aforesaid except for the purpose of such advancement as aforesaid and that the rents issues and profits of the said manors messuages lands and other hereditaments or so much of the same rents issues and profits as shall remain after answering the trusts aforesaid shall until one such portion shall become payable as aforesaid be had and received by the person or persons who for the time being shall be entitled to the same manors messuages lands and other hereditaments in reversion or remainder expectant on the determination of the same term to and for his and their own use and benefit *Provided also* and it is hereby further agreed and declared between and by the parties to these presents that if the said (*I. H.*) shall during his life give and advance to or with any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid any sum or sums of money for or towards his her or their preferment or advancement in the world then and in such case (unless the said (*I. H.*) shall by some writing under his hand direct the contrary) if such advanced sum or sums of money shall be equal to the whole of the portion or portions intended to be hereby provided for such child or children severally as aforesaid the same shall be accounted in full satisfaction of the whole of such his her or their portion or portions but if such advanced sum or sums of money shall be less than such portion or portions the same shall be considered as part only of such his her or their portion or portions and such money only shall be raised under or by virtue of the trusts of the said term of 1000 years for the portion or portions of the child or children to or with whom such sum or sums of money shall be so given or advanced by the said (*I. H.*) as together with the sum or sums of money so to be given or advanced will amount to and complete the sum of money intended to be hereby provided for such child or children respectively under or by virtue of the trusts of the said term of 1000 years and then and in such case the said (*I. H.*) his executors administrators or assigns shall be entitled to receive

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

mortgage to be made until a portion is payable.

Surplus rents to be received by persons entitled, subject to the term.

Money advanced by husband to be considered as part of portion.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Proviso for
cesser of this
term.Trusts for
management
during minori-
ties.

the sum or sums of money so to be advanced by him as aforesaid and the same shall be considered as part of his personal estate unless the said (*I. H.*) shall by some writing under his hand direct the contrary *Provided always* and it is hereby agreed and declared between and by the parties to these presents that from and immediately after all the trusts hereinbefore declared of and concerning the said term of 1000 years shall in all respects be fully performed and satisfied or shall become unnecessary or incapable of taking effect and the said *I. K.* and *L. M.* and each of them their and each of their executors administrators and assigns shall be fully reimbursed and satisfied all costs charges and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid and which they are hereby respectively authorized and empowered to levy and raise by all or any of the ways and means aforesaid and to retain accordingly the same term shall as to such of the said manors messuages lands and other hereditaments comprised therein as shall not have been sold or mortgaged for the purposes aforesaid absolutely cease and determine And as to such of the hereditaments as shall have been mortgaged for the purposes aforesaid shall subject to such mortgage or mortgages wait upon and attend the freehold and inheritance of the hereditaments so mortgaged And it is hereby declared that if any son of the said (*I. H.*) by the said (*I. W.*) who would (if this proviso were not inserted) for the time being be entitled to the possession or to the receipt of the rents and profits of the said hereditaments and premises hereby granted and hereinafter covenanted to be surrendered shall be under the age of twenty-one years then and so often as the same shall happen the said *A. B.* and *C. D.* and the survivor of them and the executors or administrators of such survivor shall enter into possession or receipt of the rents and profits of the same hereditaments and premises and shall during the minority of such son continue such possession or receipt of rents and manage or superintend the management of the same hereditaments and premises with full power to fell timber or cut underwood from time to time in the usual course for sale or otherwise and to erect pull down and repair houses and other buildings and erections and to drain or otherwise improve all or any of the said hereditaments and premises and to insure houses buildings or other property against loss or damage by fire and to make allowances to and arrangements with tenants and others and

to accept surrenders of leases or tenancies and generally to deal with the premises as they or he might do if they or he were the absolute owners thereof and shall from time to time during such minority by and out of the rents and profits of the said hereditaments and premises (including the produce of the sale of timber and underwood) pay and discharge the expenses incurred in or about such management or in the exercise of any of the powers aforesaid or otherwise in respect of the premises and all outgoings not payable by any tenant or other person and keep down any annual sum or sums of money which may for the time being be charged upon the same premises or any part thereof and the interest of any principal sum or sums of money which may be charged by way of mortgage or otherwise upon the same premises or any part thereof and apply any annual sum or sums of money which they or he shall think proper according to the age of such minor in or towards the maintenance or education of such minor And invest the residue of such rents and profits in their or his names or name in or upon any of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England or Wales but not on real securities in Ireland to be from time to time altered or varied as to them or him shall seem meet And accumulate the dividends interest and annual produce of the said stocks funds and securities in the way of compound interest by investing the same and all resulting income and produce thereof from time to time and shall stand and be possessed of and interested in the said rents and profits and the said original and accumulated funds and securities and the dividends interest and annual produce thereof upon the trusts following (that is to say) If the son during whose minority the said rents and profits shall have been accumulated as aforesaid shall attain the age of twenty-one years or shall die under that age leaving issue entitled or inheritable under the limitations hereinbefore contained *Then upon trust* to pay transfer or assign the same to such son his executors or administrators as his personal estate But if such son shall die under the age of twenty-one years without leaving issue entitled or inheritable under the limitations hereinbefore contained living at his decease *Then upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations herein contained of and concerning the monies to arise from a sale in pursuance of the power of sale herein contained and the stocks funds and securities in*

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Power for intended husband
to create jointures for after
taken wives.

or upon such monies are herein authorized to be invested and the dividends interest and annual produce thereof *Provided also* and it is hereby further agreed and declared between and by the parties to these presents that in case the said (*I. W.*) shall die in the lifetime of the said (*I. H.*) it shall and may be lawful for the said (*I. H.*) at any time or times after the decease of the said (*I. W.*) either before or after his intermarriage with any other woman or women by any deed or deeds instrument or instruments in writing to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses or by his last will and testament in writing or any codicil or codicils thereto to be by him signed in the presence of and attested by two or more credible witnesses to grant limit or appoint to or to the use of any woman or women respectively whom he the said (*I. H.*) shall marry after the decease of the said (*I. W.*) for her or their life or respective lives and in full or in part of her or their jointure or jointures and either in bar or without being in bar of dower any annual sum or sums yearly rent-charge or rent-charges not exceeding in the whole for any one such woman the yearly sum of £ of lawful money of Great Britain without any deduction to take effect immediately after the death of him the said (*I. H.*) such annual sum or sums or yearly rent-charge or rent-charges to be payable quarterly and to be issuing out of and chargeable upon all or any part or parts of the said manors messuages lands and other hereditaments hereby granted or expressed and intended so to be and for the purpose of securing the annual sum or sums yearly rent-charge or rent-charges so to be appointed as aforesaid to grant limit and appoint to the woman or women respectively to whom the said annual sum or sums yearly rent-charge or rent-charges shall be appointed as aforesaid usual powers and remedies for recovering and enforcing payment thereof respectively by distress and entry upon and perception of the rents and profits of the hereditaments so to be charged with the said annual sum or sums or yearly rent-charge or rent-charges *And also* to limit and appoint the hereditaments so to be charged as aforesaid to any person or persons whomsoever for any term or terms of years upon the usual trusts for better securing the due payment thereof to take effect immediately after the decease of the said (*I. H.*) as to the said (*I. H.*) shall seem meet But so that every such term or terms of years (if any such shall be limited) be made to determine on the death of the woman or

women for the benefit of whom the same shall be created and the payment of the arrears of her or their rent-charge or respective rent-charges and the expenses incurred by the non-payment thereof respectively *Provided also* and it is hereby agreed and declared between and by the parties to these presents that it shall and may be lawful for the said (*I. H.*) during his life and after his decease for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor from time to time and at all times during the minority or respective minorities of any child or children who by virtue of the limitations aforesaid shall for the time being be entitled to the actual possession or the receipt of the rents issues and profits of the said manors messuages lands and other hereditaments hereinbefore granted or intended so to be by any indenture or indentures to be sealed and delivered by him or them respectively in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise or lease all or any part of the said messuages lands and other hereditaments hereby granted or expressed and intended so to be to any person or persons who shall improve the same or covenant and agree to improve the same by erecting or building thereon any new house or houses erections or buildings or to rebuild or repair any of the messuages tenements erections and buildings whatsoever which now are or hereafter shall be on the same hereditaments or any part thereof or to expend such sums of money in improvements thereof respectively as shall be thought adequate for the interests therein respectively to be parted with for any term or number of years not exceeding ninety-nine years to take effect either in possession or immediately after the determination of the subsisting leases for the time being of the same hereditaments so that in every such limitation or appointment by way of demise or lease there be reserved the best and most improved yearly rent or rents to be payable during the continuance of the use or estate uses or estates created thereby and to be incident to the immediate reversion of the hereditaments so to be limited or appointed by way of demise or lease as aforesaid that can be reasonably had or gotten for the same without taking any fine premium or foregift for the making thereof and so that no such limitation or appointment by way of demise or lease as aforesaid shall be valid in law unless there be inserted therein a clause in the nature of a condition of re-entry on non-payment

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Power for tenants for life and trustees, during minority of children, to grant building leases.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Power of leasing at rack-rent.

of the rent or rents thereby to be respectively reserved and so as the appointee or appointees lessee or lessees do execute a counterpart thereof respectively and do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved *Provided also* and it is hereby further agreed and declared between and by the parties to these presents That it shall and may be lawful for the said (*I. H.*) during his life and after his decease for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor from time to time and at all times during the minority or respective minorities of any child or children who by virtue of any of the limitations aforesaid shall be entitled to the possession or the receipt of the rents of the said manors messuages lands hereditaments and premises hereby granted or intended so to be by any indenture or indentures to be sealed and delivered by him or them respectively in the presence of and attested by two or more credible witnesses to limit or appoint by way of demise or lease all or any part or parts of the said manors messuages lands and other hereditaments with the appurtenances to any person or persons for any term or number of years absolute not exceeding twenty-one years to take effect in possession and not in reversion or by way of future interest so as there shall be reserved on every such limitation or appointment by way of demise or lease the best or most improved yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be limited or appointed that can or may be reasonably had or gotten for the same without taking any fine premium or foregift or any thing in the nature of a fine premium or foregift for the making thereof and so as there be contained in every such limitation or appointment by way of demise or lease a clause in the nature of a condition of re-entry for non-payment of the rent or rents thereby to be respectively reserved and so as the appointee or appointees lessee or lessees do execute a counterpart thereof respectively and do thereby covenant for the due payment of the rent or rents thereby to be respectively reserved and be not by any clause or words therein to be contained made punishable for waste or exempted from punishment for committing waste *Provided also* and it is hereby further declared and agreed by and between the parties to these presents that it shall be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor at any time or times hereafter

Powers of sale and exchange and enfranchisement.

during the life of the said (*I. H.*) with his consent in writing and after his death at the discretion of the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor during the minority of any son of the said (*I. H.*) by the said (*I. W.*) who shall for the time being be tenant in tail male in possession by purchase of the said manors and other hereditaments hereby granted or intended so to be to dispose of and convey either by way of absolute sale or in exchange for or in lieu of other manors lands or hereditaments to be situate somewhere in that part of Great Britain called England or in the principality of Wales all or any part of the manors messuages lands hereditaments and premises hereby granted or expressed and intended so to be and the inheritance thereof in fee simple to any person or persons whomsoever for such price or prices in money or for such an equivalent or recompense in manors lands or hereditaments as to them the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor shall seem reasonable or to enfranchise any copyhold or customary messuages lands or hereditaments holden of any of the said manors hereby granted or expressed and intended so to be for such price or prices or sum or sums of money as to the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor shall seem reasonable and that for the purpose of effectuating such dispositions conveyances enfranchisement or enfranchisements (but not for any other purpose) it shall and may be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor with such consent or at such discretion as aforesaid by any deed or deeds instrument or instruments in writing sealed and delivered by them or him in the presence of and attested by two or more credible witnesses absolutely to revoke determine and make void all and every or any of the uses trusts powers and provisoes hereinbefore limited declared and expressed or to be limited or declared under the power of jointuring hereinbefore contained of and concerning the said premises or any part or parts thereof but subject to any mortgage or other disposition which may have been made under the trusts of any of the terms hereinbefore limited or to be limited under the same power of jointuring and to any lease or leases which may have been granted under any of the powers of leasing hereinbefore contained And by the same or any other deed or deeds instrument or instruments in writing sealed

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Power to revoke old and declare new uses..

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

delivered and attested as aforesaid to limit declare direct and appoint any use or uses estate or estates trust or trusts of the said premises or any part or parts parcel or parcels thereof which it shall be thought necessary or expedient to limit declare direct or appoint in order to effectuate such sales exchanges dispositions conveyances or enfranchisements as aforesaid *And also* that upon any such exchange as aforesaid it shall and may be lawful for the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor to give or receive any sum or sums of money by way of equality of exchange *And also* that upon payment of the money arising by any sale or enfranchisement of the said premises or any part thereof or to be received for equality of exchange as aforesaid or any part thereof it shall and may be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor to sign and give receipts for the same *And* that such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money therein respectively acknowledged or expressed to be received *And* that such person or persons his her or their heirs executors administrators or assigns shall not afterwards be answerable for any loss misapplication or nonapplication of such money or be obliged or concerned to see to the application thereof *And* it is hereby also agreed and declared that when all or any part or parcel of the manors or lordships hereditaments and premises hereby granted or expressed and intended so to be shall be so sold for a valuable consideration in money or any such copyhold or customary messuages lands or tenements shall be so enfranchised or any money shall be so received for equality of exchange as aforesaid they the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor shall with all convenient speed lay out and invest the money to arise by such sale or sales enfranchisement or enfranchisements or to be received for equality of exchange in the purchase of other manors lands or hereditaments in fee simple in possession to be situate somewhere in that part of Great Britain called England or in the principality of Wales of a clear and indefeasible estate of inheritance or of lands of a leasehold or copyhold tenure convenient to be held therewith or with the hereditaments hereinbefore settled yet so that during the life of the said (I. H.) every such pur-

Trusts of
money received
under power.

chase shall be made with his consent testified by some writing under his hand *And moreover* that they the said A. B. and C. D. or the survivor of them or the heirs executors or administrators of such survivor do and shall settle and assure or cause to be settled and assured as well the manors lands and hereditaments so to be purchased as the manors lands and hereditaments to be vested in the said A. B. and C. D. or the survivor of them his heirs executors or administrators in exchange as hereinbefore is mentioned To the uses upon the trusts and for the intents and purposes and with under and subject to the powers provisoes limitations declarations and agreements in and by these presents limited expressed declared and contained or which shall have been limited or created under any of the powers hereinbefore contained of and concerning the manors or lordships hereditaments and premises hereby granted or intended so to be or such of them as shall be so sold enfranchised or conveyed in exchange as aforesaid or as near thereto as the nature or quality of the lands so to be purchased and the deaths of parties and other circumstances will then admit of but so as not to increase or multiply charges and so that if any of the lands or tenements so to be purchased shall be held by lease or leases for years the same shall not for the effect or purpose of transmission vest absolutely in any child or children of the said (I. H.) who shall not attain the age of twenty-one years but nevertheless any such child or children for the time being entitled to the actual freehold of the hereditaments hereby granted or intended so to be or of the said freehold hereditaments so to be purchased shall during his or her minority or respective minorities be entitled to receive the rents issues and profits of the leasehold hereditaments so to be purchased *And* it is hereby agreed and declared that if any of the lands purchased or taken in exchange as aforesaid shall be held for a lease or leases or a grant or grants for lives or for years proper provisions shall be inserted in the settlement hereinbefore directed to be made for renewing such leases or grants from time to time as occasion shall require and that the fines fees and expenses of such renewal shall from time to time be defrayed by and out of the premises so to be purchased or taken in exchange and of which such renewals are to be made respectively so and in such manner that the several persons beneficially entitled to the same shall contribute to the expense of such renewals in the

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Directions to
settle lands
purchased and
taken in
exchange.Provision for
the renewal
of leases.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

proportions in which according to the rules of courts of equity they would be bound to contribute *Provided always* and it is hereby agreed and declared That subject and without prejudice to and so as the equities or obligations of the persons claiming under these presents as to defraying the fines and expenses of such renewal of leases or grants as aforesaid shall not thereby be changed or altered it shall be lawful for the said A. B. and C. D. and the survivor of them or the executors or administrators of such survivor by and out of the monies to arise from any such sale or enfranchisement or to be received for equality of exchange as aforesaid to pay any money which upon any exchange made in exercise of the aforesaid power in that behalf shall or may be payable by the trustees or trustee for the time being acting in the exercise of the same power for equality of exchange or which may be required for the renewal of any such lease as aforesaid *And also* to raise any money agreed to be paid by the said trustees or trustee for equality of exchange or which may be required for the renewal of any such lease or grant as aforesaid by mortgage of the hereditaments to be received in exchange or taken by renewal as aforesaid or of any other hereditaments for the time being subject to the subsisting uses or trusts of these presents and to make all such appointments assignments surrenders and other assurances and do all such other acts as shall be necessary or expedient for effectuating any such mortgage or mortgages And no mortgagee advancing money upon any mortgage purporting to be made under this power shall be bound to see such money is wanted or that no more than is wanted is raised *Provided also* and it is hereby agreed and declared that it shall be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor upon the request of the said (I. H.) during his life and after his decease at their or his own discretion to apply any money to arise by any such sale or exchange as aforesaid in or towards paying off or discharging any mortgage or other charge or incumbrance for the time being affecting all or any of the hereditaments then subject to the then subsisting uses or trusts of these presents but without changing or altering the equities or obligations of the parties claiming under these presents as to defraying the fines and expenses of such renewals of leases or grants as aforesaid *And* it is hereby agreed and declared that until the money arising by such sale or sales enfranchisement or enfranchisements or to be received for equality

Power for trustees to apply money in discharging incumbrances.

Until purchases, money to be invested.

of exchange as aforesaid shall be invested in a purchase or purchases or otherwise applied in the manner hereinbefore directed it shall and may be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor with such consent or at such discretion as aforesaid to place out such money at interest either in the parliamentary stocks or public funds of Great Britain or in government or real securities in England but not on real or other securities in Ireland *And also* from time to time with such consent or at such discretion as aforesaid to alter vary and transpose such stocks funds securities into or for other stocks funds and securities of the same or a like nature and the dividends interest annual profits and proceeds which shall from time to time arise by or in respect of such money so to be invested or by or in respect of any other sum or sums of money which shall come to the hands of the said trustees or any of them by any alteration or transposition of such securities or funds as aforesaid shall go and be payable and paid to such person or persons and be applied to and for such uses intents and purposes and in such manner as the rents and profits of the lands and tenements to be purchased therewith would go and be payable or applicable in case such purchase or purchases and settled was or were actually made *And this Indenture further witnesseth* That in pursuance of the said recited agreement and for carrying the same into execution so far as the same relates to the estates of the said (*I. H.*) held by leases for lives as hereinbefore is mentioned And in consideration of the said intended marriage and of the portion or fortune of the said (*I. W.*) he the said (*I. H.*) doth by these presents grant and confirm unto the said A. B. and C. D. their executors administrators and assigns *All that &c.* [*A full description of the property comprised in the leases*] and the reversion &c. and all the estate &c. *To have and to hold* the said messuages farms lands and all and singular other the premises comprised in the firstly hereinbefore recited indenture of lease of the day of and hereby granted or intended so to be with their and every of their appurtenances (except as hereinbefore is expressed) unto the said A. B. and C. D. their executors administrators and assigns for and during the natural lives of the said (*nominees*) and the lives and life of the survivors or survivor of them (subject nevertheless to the charges and incumbrances now affecting the same premises as hereinbefore recited or mentioned) and also subject to the payment of the rent and per-

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

To alter securities.

Grant of leases for lives.

No. DCXVI. formance of the covenants conditions and agreements in the said firstly hereinbefore recited indenture of the day of
Freeholds,
Leaseholds,
and Copyholds. reserved and contained and on the part of the lessee assignee or tenant to be paid observed and performed for or in respect of the same premises respectively upon the trusts for the intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressly or by reference declared of and concerning the same *And to have and to hold [similar habendum as to lease held on other lives] And it is hereby agreed and declared* between and by the parties to these presents that the said A. B. and C. D. their executors administrators and assigns shall stand and be seised and possessed of and interested in the said messuages farms lands hereditaments and other the premises lastly hereinbefore granted or intended so to be upon the trusts and for the intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say) *In trust* for the said (*I. H.*) his heirs and assigns until the solemnization of the said intended marriage and from and immediately after the solemnization thereof *Upon trust* that the said A. B. and C. D. and the survivor of them and the executors administrators and assigns of such survivor do and shall in the first place by and out of the rents issues and profits of the said hereditaments and premises lastly hereinbefore granted or intended so to be yearly and from time to time duly satisfy and perform the rents conditions covenants and agreements which henceforth on the part of the lessee or assignee or tenant are or ought to be paid done observed and performed for or in respect of the same premises And in the next place do and shall from time to time pay and keep down the interest which shall become due or payable for or in respect of the charges and incumbrances now affecting the same hereditaments and premises *And* in the next place do and shall renew or use their or his utmost endeavours to obtain a renewal of the present or any future leases for which the premises lastly hereby granted or intended so to be are respectively held when and so often as the same shall be required upon such terms and in such manner as they or he shall think reasonable And for that purpose do and shall by and out of the rents issues and profits of the same hereditaments and premises or by mortgage thereof or by such other ways and means as they or he shall think proper levy and raise such sum

Declaration of trusts of leaseholds.

After marriage to pay rents, &c.

To obtain renewals.

and sums of money as shall be sufficient or which they or he shall deem it expedient to levy or raise in order to pay the fines fees and expenses of renewing such leases as aforesaid And do and shall immediately upon the decease of any one of them the said (*nominees in the leases*) or of any nominee to be named in such lease or leases to be made of the premises lastly hereinbefore granted or intended so to be procure a good and effectual new lease to be made and executed to them the said A. B. and C. D. or the survivor of them or the executors and administrators of such survivor of all the hereditaments and premises lastly hereinbefore granted or intended so to be with the appurtenances at and under the rents and covenants mentioned and specified in the said two several indentures of the [*dates*] respectively And for the purpose of effecting such renewals as aforesaid do and shall surrender and yield up the then subsisting lease or leases of the said hereditaments and their and his term and interest therein respectively *Provided always* and it is hereby agreed and declared between and by the parties to these presents that the said A. B. and C. D. or the survivor of them or the heirs executors administrators or assigns of such survivor shall not be personally answerable or accountable for any neglect or laches in the non-payment of the rent or non-performance of the covenant reserved and contained in the said recited leases or in any renewed lease or leases of the said premises Nor shall the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor their or his assigns be personally answerable for any neglect or laches in not effecting any renewal or renewals of the same leases respectively unless notice by the person or persons for the time being beneficially interested in the said hereditaments shall be given to them or him that the time for renewing the same is arrived and the person or persons for the time being beneficially interested in the said hereditaments should advance or cause to be advanced to them or him upon a mortgage of the said leasehold premises a sufficient sum of money for accomplishing such renewal or renewals *And it is hereby agreed and declared* between and by the parties to these presents That the said A. B. and C. D. and the survivor of them and the executors and administrators of such survivor their or his assigns shall and do subject and without prejudice to the trusts aforesaid stand and be possessed of and interested in the said messuages farms lands and other hereditaments hereby lastly granted for and

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

To surrender
leases for re-
newal.

Trustees not to
be answerable
for neglect.

To stand pos-
sessed of lease-
holds upon
trusts cor-
responding with
freeholds.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Covenant by
husband to pay
rents and per-
form covenants.To endeavour
to obtain re-
newals.

during their and his estate and interest therein by virtue of or under the present or any future lease or leases of the same upon and for such trusts intents and purposes and with under and subject to such powers provisoes and declarations as will best correspond with and be similar to the uses trusts intents and purposes powers provisoes and declarations hereinbefore expressed and contained of and concerning the said manors and other hereditaments firstly hereinbefore granted or intended so to be as nearly as the different natures and qualities of the same respectively and the rules of law and equity will permit yet so as not to increase or multiply charges and so that the said leasehold premises shall not nor shall any part of them for the purpose of transmission vest absolutely in any tenant in tail taking by purchase the freeholds of inheritance hereby settled under the limitations herein contained or any of them who shall not attain the age of twenty-one years but shall go devolve and remain in the same manner as if they had been freehold of inheritance and had been settled accordingly *And* the said (*I. H.*) *Doth* hereby for himself his heirs executors and administrators covenant and agree with the said A. B. and C. D. their executors administrators and assigns that he the said (*I. H.*) his heirs executors or administrators shall and will well and truly pay or cause to be paid the rents which shall from time to time during the term of his natural life become due and payable for and in respect of the said leasehold hereditaments and every part thereof under the present or any renewed lease or leases and shall and will perform and observe the covenants conditions and agreements in the said two several indentures of the [*dates*] reserved and contained and in any renewed lease or leases to be reserved and contained and which on the part of the assignee or tenant are or ought to be paid observed and performed *And also* shall and will during the term of his natural life at all times and seasons use his utmost endeavours to procure a renewal of the leases subsisting for the time being in the said hereditaments in the names or name of the said A. B. and C. D. or the survivor of them or the executors administrators or assigns of such survivor for or during the lives or life of the person or persons for whose lives or life the said hereditaments shall then be held and the lives or life of some other person or persons so that the said hereditaments may during the continuance of the trusts hereby created and so far as the circumstances of the case will admit be held by the said A. B. and C. D. and the survivor of them and

the executors administrators and assigns of such survivor by virtue of or under such renewed lease for the lives of three or two persons accordingly (as the said hereditaments have been severally held and the lessors will grant the same) and the life of the longest liver of them under and subject to the like rents and covenants as are in the same indenture of the [dates] reserved and contained and pay the fine for every such renewed lease and all costs and charges relating thereto *Provided always* and it is hereby agreed and declared between and by the parties to these presents that notwithstanding the covenants hereinbefore entered into by the said (*I. H.*) the said leasehold hereditaments shall so far be the original or exclusive fund for raising the money wanted for defraying the fines and other expenses of the said renewals as to entitle the said (*I. H.*) to a mortgage of the said leasehold hereditaments for the amount of the said fines and expenses with lawful interest for the same from the said A. B. and C. D. their executors administrators and assigns unless the said (*I. H.*) shall by writing under his hand dispense with such mortgage *But nevertheless* this present provision is not either in law or equity to release the said (*I. H.*) from the covenants hereinbefore entered into by him for paying the money wanted for a renewal for the time being of the said hereditaments *Provided always* and it is hereby further agreed and declared that if any mortgage shall be made of the said leasehold hereditaments for the purposes hereinbefore mentioned the said (*I. H.*) shall during his life keep down the interest of the money charged thereupon by way of mortgage but the mortgagee of the said hereditaments shall not be affected by the stipulation lastly hereinbefore contained *And this Indenture also witnesseth* That in pursuance of the said recited agreement and for carrying the same into execution so far as relates to the copyhold part of the said estates and in consideration of the said intended marriage He the said (*I. H.*) *Doth* for himself his heirs executors and administrators covenant and agree with the said A. B. and C. D. their heirs and assigns by these presents that he the said (*I. H.*) shall and will at or before the next general court to be holden for the said manor of well and effectually surrender or cause or procure to be surrendered into the hands of the lord of the said manor and according to the custom thereof to the use of the said A. B. and C. D. their heirs and assigns all and singular the copyhold messuages farms lands tenements and other hereditaments of or to which he the said

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Husband may
require mort-
gage for ex-
penses.Covenant by
husband to sur-
render copy-
holds.

No. DCXVI. (*I. H.*) is seised or entitled for an estate of inheritance or otherwise at the will of the lord of the manor of _____ by copy of court roll with their appurtenances *And* all the estate right title interest possession property claim and demand whatsoever both at law and in equity of him the said (*I. H.*) of in to from out of or upon the same copyhold hereditaments and premises respectively to hold the same but severally subject and charged as hereinbefore is mentioned unto the said A. B. and C. D. their heirs and assigns of the lord of the said manor of _____ at the will of the said lord by copy of court roll by the rents and services therefore due and of right accustomed to be paid and performed upon and for such trusts intents and purposes and with under and subject to such powers provisoes agreements and declarations as (regard being had to the nature of the said estates and the terms by which the same are respectively held) will nearest or best correspond with the uses estates trusts powers provisoes agreements and declarations hereinbefore expressed and contained of and concerning the said fee simple hereditaments hereby granted or intended so to be or such or so many of the same uses estates trusts powers provisoes and declarations as shall then be subsisting undetermined and capable of taking effect but so as not to increase or multiply charges *Provided always* and it is hereby agreed and declared between and by the parties to these presents that the receipt or receipts in writing of the several trustees hereby appointed or the survivor of them or the executors administrators or assigns of such survivor or of the trustees or trustee for the time being of these presents for any sum or sums of money payable to them or him or any of them under or by virtue of these presents or in or about the execution of any of the trusts powers or authorities herein declared or contained shall be a sufficient and effectual discharge or sufficient and effectual discharges for the same or for so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received *And* that the person or persons to whom the same shall be given his her or their heirs executors administrators or assigns shall not afterwards be answerable or accountable for any loss misapplication or non-application or be in anywise concerned to see to the application of the money therein mentioned and acknowledged to be received *Provided always* and it is hereby agreed and declared by and between the parties to these presents that if the said trustees or any future trustee to be appointed in the place or stead of any

Trustees' receipts to be good discharges.

To appoint new trustees.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

of them as hereinafter is mentioned during the continuance of the aforesaid trusts shall happen to die or desire to be discharged of and from the said trusts or go to reside beyond seas or refuse or become incapable to act in the execution of the same then and in any such case and when and so often as the same shall happen it shall and may be lawful for the said (I. H.) during his life and after his death for the surviving or continuing trustees or trustee for the time being of these presents (and for this purpose refusing or retiring trustees shall if willing to act in the execution of this power be considered continuing trustees) or for the acting executors or administrators of the last surviving or continuing trustee to appoint any other person or persons to be a trustee or trustees for the purposes aforesaid in the stead or place of the trustee or trustees so dying desiring to be discharged going to reside beyond seas or refusing or becoming incapable to act as aforesaid *And* when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid all the trust estates monies and premises which shall be then vested in the trustee or trustees so dying desiring to be discharged going to reside beyond seas or refusing or becoming incapable to act shall be thereupon conveyed and assigned and transferred in such sort and manner and so as that the same shall and may be lawfully and effectually vested in the surviving or continuing trustee and such new trustee or in such new trustees only as the case may require to the same uses upon the same trusts and for the same intents and purposes as are hereinbefore expressed and declared of and concerning the same respectively or such of them as shall be then subsisting and capable of taking effect [*And* (a) that the new trustee or trustees appointed in the place and stead of the said A. B. and C. D. or either of them as aforesaid or of any trustee or trustees succeeding them or either of them as aforesaid either alone or jointly with such of them the said A. B. and C. D. or of such succeeding trustee or trustees as shall continue to act shall and may either before or after any such conveyance or assurance as last aforesaid exercise all or any of the powers or authorities hereinbefore reserved or given to the said A. B. and C. D. and the survivor of them and the heirs executors and administrators of such survivor as aforesaid] *And* that every

(a) As to the reason for inserting the clause in brackets, see 1 Sand. on Uses, 506; 2 Id. 202, 5th ed.; 2 Sugd. on Powers, 500—503, 7th ed.

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*

Clause of indemnity to trustees.

To reimburse themselves.

such new trustee shall and may as well before as after the said trust premises shall have become vested in him (a) act in all things and assist in the management carrying on and executing the trusts to which he shall be so appointed as fully and effectually and with the same powers and authorities as if such new trustee had been originally by these presents nominated and appointed and as the trustee in or to whose place he shall come or succeed might or could have done or have been invested with under or by virtue of these presents *Provided always* and it is hereby declared and agreed by and between the parties to these presents that the said trustees hereby appointed and every such new trustee or trustees to be appointed as aforesaid and the heirs executors administrators and assigns of them and each and every of them shall be charged and chargeable respectively only for such monies as they shall actually receive by virtue of the trusts hereby in them reposed notwithstanding his or their giving or signing any receipts for the sake of conformity And any one or more of them shall not be answerable or accountable for the other or others of them or for the acts receipts neglects or defaults of the other or others of them but each and every of them only for his and their own acts receipts neglects and defaults respectively And that any one or more of them shall not be answerable or accountable for any banker broker or other person with whom or in whose hands any part of the trust monies shall or may be deposited or lodged for safe custody or otherwise in the execution of the trusts hereinbefore mentioned and that they or any of them shall not be answerable or accountable for the insufficiency or deficiency of any securities stocks or funds in or upon which the said trust monies or any part thereof shall be placed out or invested nor for any other loss misfortune or damage which may happen in the execution of any of the aforesaid trusts or in relation thereto unless the same shall happen by or through their own wilful defaults respectively *And also* that they the said trustees and each and every of them and the heirs executors administrators and assigns of them and each and every of them shall and may by and out of such monies as shall come to their respective hands by virtue of the trusts aforesaid retain to and reimburse himself and themselves respectively and also pay and allow to his and their co-trustee or co-trustees all costs charges damages and expenses

(a) See *Warburton v. Sandys*, 14 Sim. 622.

which they or any of them shall or may suffer sustain expend dis-
 burse be at or be put unto in the execution of any of the afore-
 said trusts or in relation thereto *And* the said (*I. H.*) doth hereby
 for himself his heirs executors and administrators respectively
 and every of them covenant with the said A. B. and C. D. their
 heirs executors administrators and assigns in manner following
 (that is to say) That notwithstanding any act deed matter or
 thing whatsoever by him the said (*I. H.*) or any of his ancestors
 or predecessors in title made done executed committed or wil-
 lingly or knowingly suffered to the contrary he the said (*I. H.*)
 now hath in himself good right full power and absolute authority
 to grant and confirm the fee simple estates and the estates held
 by leases for lives hereinbefore severally granted and confirmed
And to surrender and assure the copyhold hereditaments and
 premises hereinbefore covenanted to be surrendered To the
 several uses upon and for the several trusts intents and purposes
 and under and subject to the several powers provisoes and
 declarations hereinbefore limited expressed declared and con-
 tained of and concerning the same respectively *And* that not-
 withstanding any such act deed matter or thing as hereinbefore
 is mentioned *All* and singular the said fee simple estates free-
 holds for lives and copyhold tenements shall and may from time
 to time and at all times after the solemnization of the said
 intended marriage remain continue and be to the several uses
 upon and for the several trusts intents and purposes and under
 and subject to the several powers provisoes and declarations
 hereinbefore limited expressed declared and contained of and
 concerning the same respectively *And* shall and may be peace-
 ably and quietly held and enjoyed accordingly without any lawful
 let suit trouble denial eviction ejection disturbance interruption
 claim or demand whatsoever of or by him the said (*I. H.*) or by
 any other person or persons lawfully or equitably claiming or to
 claim by from or under or in trust for him or any of his an-
 cestors (except as hereinafter is excepted) *And* that free and
 clear and freely and clearly acquitted exonerated released and
 for ever discharged or otherwise by him the said (*I. H.*) or his
 heirs executors or administrators well and sufficiently saved
 defended kept harmless and indemnified of from and against
 all and all manner of former and other gifts grants mortgages
 leases forfeitures uses entails trusts judgments extents executions
 rents arrears of rent annuities and debts and from and against all
 other estates titles troubles charges and incumbrances whatso-

No. DCXVI.

*Freeholds,
Leaseholds,
and Copyholds.*Covenants by
husband.Good right to
convey.For quiet en-
joyment.Free from in-
cumbrances.

No. DCXVI. ever either already or hereafter to be had made committed done
Freeholds,
Leaseholds,
and Copyholds. executed occasioned or suffered by him the said (*I. H.*) or his
 Exception. heirs or any other person or persons lawfully claiming or to
 claim by from or under or in trust for him or them (other than
 and except such leases thereof as are now subsisting) *And also*
 save and except the rents reservations covenants conditions and
 agreements by and in the said hereinbefore in part recited in-
 dentures of lease reserved and contained which on the tenants'
 lessees' or assignees' part from henceforth are or ought to be paid
 observed and performed for and in respect of the same premises
And also save and except the rents and services to be paid or
 performed for or in respect of the said copyhold tenements and
 except the charges and incumbrances now affecting the said
 fee simple estates freeholds for lives and copyhold heredita-
 ments and premises respectively and which are hereinbefore
 mentioned or referred to *And further* that he the said (*I. H.*)
 Further assur- and his heirs and all and every other person and persons having
 ances, or lawfully claiming or who shall or may have or lawfully claim
 any estate right title interest trust property claim or demand
 whatsoever either at law or in equity of in to or out of the
 said fee simple estates freeholds for lives and copyhold here-
 ditaments and premises hereby severally granted and cove-
 nanted to be surrendered respectively or intended so to be
 or any of them or any part thereof by from or under or in
 trust for him or by from or under any of his ancestors
 (other than and except any person or persons claiming or to
 claim under or by virtue of any such excepted lease or leases
 or other incumbrances as are hereinbefore excepted or any of
 them) shall and will from time to time and at all times after the
 solemnization of the said intended marriage at the request of the
 said A. B. and C. D. or the survivor of them or the heirs ex-
 ecutors or administrators of such survivor their or his assigns
 or of any of the parties interested in the premises under these
 presents but at the proper costs and charges of him the said
 (*I. H.*) or his heirs executors or administrators or the said
 trust estate make do acknowledge and execute or cause and pro-
 cure to be made done acknowledged and executed all and every
 such further and other lawful and reasonable acts deeds sur-
 renders conveyances and assurances in the law whatsoever for
 the further better more perfectly and absolutely conveying sur-
 rendering and assuring of the said fee simple estates freeholds
 for lives and copyhold hereditaments and premises hereby

granted and covenanted to be surrendered respectively or intended so to be and every of them and every part and parcel thereof with their and every of their appurtenances according to the nature and quality of the said hereditaments and premises respectively To the uses upon and for the trusts intents and purposes and under and subject to the several powers provisoes and declarations hereinbefore limited declared and contained of and concerning the same or such of them as shall be then subsisting undetermined or capable of taking effect as by the said A. B. and C. D. or the survivor of them or the heirs executors or administrators of such survivor their or his assigns or any of the parties interested in the premises their or any of their counsel in the law shall be reasonably advised or devised and required and be tendered to be made done and executed
In witness &c.

No. DCXVI.
*Freeholds,
 Leaseholds,
 and Copyholds.*

The schedule to which the above written indenture refers. The first item to the said schedule. The second item &c. [*state the names.*]



No. DCXVII.

No. DCXVII.
*Of Share of
 Real Estate.*

Conveyance of One Third of an Estate to Trustees for Sale the Trusts of the Money are declared by a separate Deed (see No. DCXIX., *post*, p. 1409).

Conveyance of
 real estate
 upon trusts for
 sale.

This Indenture made &c. Between (*intended husband*) of the first part (*intended wife*) of the second part and (*two trustees*) of the third part *Whereas* the said (*I. H.*) is seised or otherwise well entitled for an estate of inheritance in fee simple of or to one undivided third part or share of and in the and hereditaments hereinafter described *And whereas* [*recite intended marriage*] *And whereas* upon the treaty for the said intended marriage it was (amongst other things) agreed That the said (*I. H.*) should convey his said undivided third part of and in the said hereditaments unto the said (*T.*) and their heirs To the uses upon and for the trusts intents and purposes and subject to the powers provisoes agreements and declarations hereinafter expressed or referred to concerning the same *Now this Indenture witnesseth* That in pursuance of and performance of the said agreement and in consideration of the said intended marriage He the said (*I. H.*) Doth by these presents grant alien and confirm

Conveyance of
 share of real
 estate to trustees.

No. DCXVII. unto the said (*T.*) and their heirs *All* that one undivided third
Of Share of part or other the part or share of the said (*I. H.*) of and in *All*
Real Estate. [*parcels, general words. All the estate, &c.*] *To have and to*
hold the said undivided third part of and in the said and
other hereditaments hereinbefore described and all other the
premises hereinbefore granted or intended so to be with their
and every of their appurtenances unto the said (*T.*) and their
heirs To the use of the said (*I. H.*) and his heirs until the said
intended marriage shall be solemnized and from and after the
solemnization thereof To the use of the said (*T.*) their heirs and
assigns upon and for the trusts intents and purposes and with
under and subject to the powers provisoes agreements and de-
clarations hereinafter expressed declared and contained or re-
ferred to of and concerning the same (that is to say) *Upon trust*
Trusts for sale. that the said trustees or trustee for the time being of these pre-
sents do and shall at such time or times during the lives of the
said (*I. H.*) and (*I. W.*) and the life of the survivor of them as
they the said (*I. H.*) and (*I. W.*) or the survivor shall in that
behalf direct by any writing or writings under their his or her
hands or hand and after the decease of the survivor of them at
such time or times as to the said trustees or trustee for the
time being shall seem proper absolutely sell and dispose of the
said undivided part and hereditaments hereby granted or in-
tended so to be or any part thereof either by public auction or
private contract or partly in one mode and partly in the other
to any person or persons whomsoever at such price or prices as
to the said trustees or trustee shall seem proper and either with
or without special or other conditions or stipulations relative to
the title or the commencement or evidence of title or otherwise
as the said trustees or trustee for the time being shall think
proper and also with full power for them or him to buy in the
said hereditaments or any part thereof at any auction or auctions
or to rescind or vary the terms of any contract for sale and to
resell the same premises or any part thereof without being re-
sponsible for any loss occasioned thereby And for the purposes
aforesaid or any of them Do and shall make and execute *All*
such agreements and assurances as they or he shall think proper
And it is hereby agreed and declared between and by the
parties to these presents That the said (*T.*) their heirs executors
administrators and assigns respectively shall stand and be pos-
sessed of and interested in all and singular the sums and sum
of money to arise and be produced by any sale or sales which

Trustees to
hold monies
and rents upon
trusts declared
by deed of
even date.

shall be made in pursuance of these presents after deducting or retaining the costs charges and expenses attending any sale or sales *And also* of and in the rents issues and profits of the said hereditaments and premises until the same shall be sold Upon and for such trusts intents and purposes and with under and subject to such powers provisoes agreements and declarations as are or shall be expressed declared or contained of or concerning the same respectively in and by an indenture already prepared and engrossed bearing or intended to bear even date with these presents and made or intended to be made between the same persons as are parties to these presents *Provided always* and it is hereby agreed and declared between and by the parties to these presents that the receipt or receipts in writing of the said (*T.*) or the survivor of them or the heirs executors administrators or assigns of such survivor or of the trustees or trustee for the time being of these presents for any sum or sums of money payable to them or him under or by virtue of these presents or in or about the execution of the trusts hereby declared shall be a sufficient and effectual discharge for the same or for so much thereof respectively as in such receipt or receipts shall be acknowledged to be received and that the person or persons to whom the same shall be given his her or their heirs executors administrators or assigns shall not afterwards be answerable or accountable for any loss misapplication or nonapplication or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received *Provided always* and it is hereby agreed and declared that it shall be lawful for the said trustees or trustee for the time being of these presents at any time or times hereafter before the hereditaments and premises hereby granted or intended so to be shall be sold in pursuance of the trust or direction hereinbefore contained at the request and by the direction of the said (*I. H.*) and (*I. W.*) or of the survivor of them to be testified by any writing or writings under their his or her hands and seals or hand and seal and after the decease of such survivor then at the discretion of the said trustees or trustee to join and concur with the person or persons for the time being seised of or entitled to the other part or share or parts or shares of and in the said and hereditaments of which an undivided part or share is hereby granted or intended so to be or empowered to concur in a partition thereof in making a partition of the same heredita-

No. DCXVII.
Of Share of
Real Estate.

Trustees receipts to be
sufficient discharge.

Power to make
partition.

No. DCXVII.

*Of Share of
Real Estate.*

ments or any of them or any part thereof And that for the purpose of effectuating any such partition or division as aforesaid it shall be lawful for the said trustees or trustee for the time being at such request and direction or at such discretion as aforesaid to enter into make do and execute all such contracts deeds assurances and things as to them or him shall seem reasonable or proper *And also* to pay or receive any sum or sums of money for equality of partition *And also* that upon any such partition or division as aforesaid the hereditaments which shall be received in lieu of or as a specific allotment for the undivided part or share hereditaments and premises hereby granted and released or intended so to be or any of them or any part thereof shall be conveyed to upon and for such and the same uses trusts and purposes and subject to such and the same powers provisoes agreements and declarations (except the power of partition hereinbefore contained) as are in and by these presents expressed or referred to concerning the said undivided share and hereditaments hereby granted or intended so to be or as near thereto as the deaths of parties and other intervening accidents will admit of *And* in case in pursuance of the authority in that behalf hereinbefore contained the said trustees or trustee for the time being shall receive any sum or sums of money for equality of partition as aforesaid they or he shall stand possessed thereof upon and for such trusts intents and purposes and subject to such powers provisoes agreements and declarations as are hereinbefore expressed or referred to concerning the monies to arise from the sale or sales to be made under the authority of these presents *And* that in case the said trustees or trustee shall be required to pay any sum or sums of money for equality of partition Then it shall be lawful for the said trustees or trustee for the time being to raise the same by a charge or mortgage of the hereditaments the entirety whereof shall or may be allotted to them or him in lieu of or substitution for the said undivided part and hereditaments hereby granted or intended so to be and at such rate of interest and upon such other terms and conditions as the said trustees or trustee shall think proper *Provided always* and it is hereby agreed and declared between and by the parties to these presents that in the meantime and until the part or share hereditaments and premises hereby granted and released or intended so to be shall be sold in pursuance of the trusts or direction hereinbefore in that behalf contained it shall and may be lawful for the trustees or trustee for the time being

Power to lease.

of these presents with the consent in writing of the said (*I. H.*) and (*I. W.*) or the survivor of them during their joint lives or of the life of the survivor of them and after the decease of such survivor then at the discretion of the said trustees or trustee to demise or lease all or any part or parts of the said part or share and other hereditaments hereby granted or intended so to be or any of them with the appurtenances or the hereditaments which shall be received in lieu of or as a specific allotment for the same undivided part or share and hereditaments or any part thereof to any person or persons for any term or number of years absolute not exceeding _____ years to take effect in possession and not in reversion or by way of future interest so as &c. [See *Power of Leasing*, ante, p. 1385. *Covenants for Title by intended Husband, and for further Assurance. Power to appoint New Trustees.*] *In witness &c.*

No. DCXVII.
*Of Share of
Real Estate.*

—◆—

No. DCXVIII.

Transfer of Mortgage to which the Wife is absolutely entitled upon Trusts which are declared by a separate Deed (a). (See No. DCXIX., post, p. 1409.)

No. DCXVIII.
*Of Money due
on Mortgage.*

This Indenture made &c. Between (intended wife) of the first part (intended husband) of the second part (two trustees) of the third part Whereas [recite mortgage in fee for securing £ with interest to wife, ante, No. DLXXVII.] And whereas a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (I. H.) and (I. W.) And it was

Transfer of mortgage debt to trustees.
Recital of intended marriage.
Of agreement to assign mortgage.

(a) Where money secured upon mortgage is made the subject of marriage settlements and assigned upon various trusts, there should always be a separate deed by which the mortgage money and the estate in mortgage should be assigned to the trustees of the settlement, with a declaration that their receipt for the mortgage money shall be a discharge to the parties paying. In making the assignment by a separate deed an advantage is given to the mortgagor by his being kept from being implicated with the trusts of the settlement, and on the mortgage being discharged, by having that deed in his custody, which preserves the chain of his title, and which otherwise he probably would not have. An advantage is also given to the persons interested in the settlement from having the contents and operation of the settlement kept from the knowledge of the mortgagor and those claiming under him. It also avoids difficulties as to covenants for the production of title deeds.

Advantage of separate deed.

No. DCXVIII. upon the treaty for the said intended marriage (amongst other things) agreed that the said sum of £ and the several securities for the same should be assigned and conveyed to the said (T.) their heirs executors administrators and assigns Upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed or referred to of and concerning the same respectively *Now this Indenture witnesseth* That in pursuance and part performance of the said agreement and in consideration of the said intended marriage the said (I. W.) with the privity and approbation of the said (I. H.) testified by his being a party to and sealing and delivering these presents *Doth* by these presents assign transfer and set over unto the said (T.) their executors administrators and assigns *All* that the said sum of £ now due and owing to the said (I. W.) upon the said recited indenture of mortgage and the interest henceforth to grow due for the same and the full benefit of the covenant entered into by the said (*mortgagor*) with the said (I. W.) in and by the said indenture of mortgage for payment of the same sum and interest *And* all the estate right title interest claim and demand whatsoever both at law and in equity of the said (I. W.) of in to out of or upon the said sum of £ and interest *To have* hold receive perceive and take the said sum of £ and interest unto the said (T.) their executors administrators and assigns Upon and for such trusts intents and purposes and with under and subject to such powers provisoes agreements and declarations as are or shall be declared or expressed of and concerning the same in and by an indenture already prepared and engrossed bearing or intended to bear even date with these presents and made or expressed to be made between the said (I. H.) of the first part (I. W.) of the second part and the said (T.) of the third part *And* the said (I. H.) and (I. W.) do and each of them doth hereby irrevocably make nominate and appoint the said (T.) and the survivor of them his executors or administrators to be the true and lawful attornies and attorney of the said (I. H.) and (I. W.) and each of them in their or either of their names or name at any time or times after the solemnization of the said intended marriage to ask demand sue for recover and receive of and from all and every persons and person who are is or shall or may be liable to pay the same respectively the sum and interest hereinbefore assigned or

*Of Money due
on Mortgage.* —

Assignment of
mortgage.

Habendum
upon trusts de-
clared by deed
of even date.

Power of attor-
ney.

intended so to be and on payment thereof or of any part thereof respectively to give sign and execute receipts acquittances releases or other discharges for the same respectively and on non-payment thereof or of any part thereof respectively to bring commence carry on and prosecute any action suit or other proceeding whatsoever relating to the premises as fully and effectually to all intents and purposes whatsoever as the said (*I. H.*) and (*I. W.*) or either of them might or could have done in their his or her own proper persons or person in case these presents had not been executed *And* for all or any of the purposes aforesaid to appoint a substitute or substitutes and such substitution from time to time at pleasure to revoke and whatsoever the said attornies or attorney or their or his substitute or substitutes shall lawfully do or cause to be done in and about the premises the said (*I. H.*) and (*I. W.*) do hereby jointly for themselves their heirs executors and administrators and each of them doth hereby separately for himself and herself and his and her heirs executors and administrators covenant and agree with the said (*T.*) their executors administrators and assigns to allow ratify and confirm and that they the said (*I. H.*) and (*I. W.*) respectively will not attempt to revoke and annul the power and authority hereinbefore contained *And this Indenture also witnesseth* That in pursuance and further performance of the said agreement and in consideration of the said intended marriage she the said (*I. W.*) with the like privity and approbation of the said (*I. H.*) testified as hereinbefore is mentioned doth by these presents grant alien and confirm unto the said (*T.*) their heirs and assigns *All* and singular the messuages lands tenements hereditaments and premises by the said in part recited indenture of (*mortgage*) conveyed unto and to the use of the said (*I. W.*) her heirs and assigns by way of mortgage as hereinbefore is mentioned and recited with the appurtenances *And* all the estate right title interest property claim and demand whatsoever of her the said (*I. W.*) in to from out of or upon the said messuages lands tenements and hereditaments and every or any of them and every or any part or parts thereof *To have and to hold* the said messuages lands tenements hereditaments and all and singular other the premises hereby granted or intended so to be with their and every of their appurtenances unto the said (*T.*) their heirs and assigns *To* the only use of the said (*T.*) their heirs and assigns *Subject nevertheless* to redemption by the said (*mortgagor*) his heirs executors administrators and

No. DCXVIII.
*Of Money due
on Mortgage.*

Conveyance of
mortgaged estate.

Habendum to
trustees, subject
to redemption.

No. DCXVIII. assigns on payment of the said sum of £ and interest due
Of Money due or to become due for the same unto them the said (*T.*) their
on Mortgage. executors administrators and assigns [*Declaration that receipts*
of Trustees shall be good discharges, ante, p. 1403. Power to ap-
point new Trustees to correspond with power in No. DCXX., post,
p. 1419.] And the said (I. W.) Doth hereby for herself her heirs
Covenants by executors and administrators covenant and agree with the said
intended wife. (*T.*) their heirs executors administrators and assigns in manner
Right to assign. following (that is to say) *That* she the said (*I. W.*) now hath
in herself good right full power and lawful and absolute autho-
rity to assign the said sum of £ and interest hereinbefore
assigned or intended so to be unto the said (*T.*) their executors
administrators and assigns upon the trusts and in manner afore-
said and according to the true intent and meaning of these
Against in- presents *And also* that she the said (*I. W.*) hath not at any
cumbrances. time heretofore made done or executed or knowingly suffered
any act deed matter or thing whatsoever by means whereof the
said hereditaments and premises hereby granted or in-
tended so to be or any part thereof are or is charged incum-
bered or in anywise affected in title estate or otherwise how-
soever *And lastly* that she the said (*I. W.*) and her heirs ex-
For further ecutors or administrators and every person claiming by from
assurance. under or in trust for her or them shall and will at all times
after the solemnization of the said intended marriage upon every
reasonable request and at the costs and charges of the said (*T.*)
or of the said trust estate or of the survivor of them his heirs
executors or administrators or their or his assigns make do and
execute or cause to be made done and executed all such further
and other lawful and reasonable acts deeds assurances and
things for the better and more effectually assigning assuring and
confirming of the said sum of £ and interest hereinbefore
assigned or intended so to be unto the said (*T.*) their executors
administrators and assigns *And also* for enabling them to receive
recover and enforce the payment thereof respectively upon the
trusts aforesaid *And also* for conveying and assuring the
said and hereditaments hereby granted or intended so to be
unto and to the use of them the said (*T.*) their heirs and assigns
for ever in manner aforesaid according to the true intent and
meaning of these presents as by the said (*T.*) their heirs ex-
ecutors administrators or assigns or their or any of their counsel
in the law shall be reasonably devised or advised and required
In witness &c.

No. DCXIX.

Settlement of Monies to arise from Sale of Real Estate conveyed by separate Deed to Trustees for Sale (see No. DCXVII., ante, p. 1401), *and of Mortgage Debt transferred to Trustees by separate Deed* (see No. DCXVIII., ante, p. 1405).

No. DCXIX.

Of Monies arising from Sale of Real Estate, and Mortgage Debt.

This Indenture made &c. Between (intended husband) of the first part (intended wife) of the second part and (two trustees) of the third part Whereas [recital of intended marriage, ante, p. 1405] And whereas the said (I. H.) is seised or otherwise well entitled for an estate of inheritance in fee simple of or to one undivided third part or share of and in a certain messuage farm and lands situate in the parishes of in the county of And whereas the said (I. W.) is absolutely entitled to the sum of £ secured by an indenture by way of mortgage dated the day of and made between (mortgagor) of the one part and the said (I. W.) of the other part whereby certain lands in the parish of in the county of were granted by the said (mortgagor) unto and to the use of the said (I. W.) her heirs and assigns subject to redemption on payment of the said principal sum of £ with interest at the rate of £ per cent. per annum but all interest on the said sum has been paid up to the day of the date of these presents And whereas on the treaty for the said intended marriage it was agreed that the said (I. H.) should convey the undivided third part or share to which he is entitled as aforesaid unto and to the use of the said (T.) and their heirs upon trust to sell the same and to stand possessed of the money arising from such sale upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same And on the treaty aforesaid it was further agreed [recite agreement to assign mortgage, see ante, p. 1406] And whereas in pursuance of the said recited agreement in this behalf by an indenture bearing even date herewith and made or expressed to be made between the said (I. H.) of the first part the said (I. W.) of the second part and the said (T.) of the third part the said (I. H.) hath granted the undivided third part or share and other the hereditaments at aforesaid with their appurtenances unto the said (T.) and their heirs to the use of the said (I. H.) and his heirs until the said intended marriage shall be solemnized and from and

Recitals.

Husband entitled to share of an estate.

Intended wife entitled to money secured on mortgage.

Agreement on marriage.

Of conveyance of husband's share to trustees for sale.

No. DCXIX.
*Of Monies
 arising from
 Sale of Real
 Estate, and
 Mortgage Debt.*
 Of transfer of
 mortgage to
 trustees.

after the solemnization thereof to the use of the said (*T.*) their heirs and assigns *Upon trust* with such consent or at such discretion as in the said last mentioned indenture is mentioned To sell and dispose of the same in manner therein expressed *And* by the said last mentioned indenture it is agreed and declared [*recite the declaration, ante, p. 1403*] *And whereas* in pursuance of the said recited agreement the said (*I. W.*) by an indenture of assignment and grant bearing even date herewith and made or expressed to be made between the said (*I. W.*) of the first part the said (*I. H.*) of the second part and the said (*T.*) of the third part hath assigned the said principal sum of £ and the interest henceforth to grow due for the same unto the said (*T.*) their executors administrators and assigns *Upon* and for such trusts intents and purposes and with under and subject to such powers provisoes agreements and declarations as were or should be expressed and declared of and concerning the same sum and interest by a certain indenture therein mentioned to be already prepared and engrossed and intended to bear even date therewith and to be made between the persons therein mentioned being the same persons as are parties hereto *And* by the said indenture now in recital the said (*I. W.*) hath granted the said mortgaged hereditaments and premises unto and to the use of the said (*T.*) their heirs and assigns subject to redemption as therein expressed *Now this Indenture* (being the indenture referred to by the said first hereinbefore recited indenture of even date herewith) *witnesseth* That in further performance of the said recited agreement in this behalf and in consideration of the said intended marriage it is hereby agreed and declared between and by the parties to these presents that the said (*T.*) their heirs executors administrators and assigns shall stand and be possessed of and interested in all and every the sums and sum of money to arise from and to be produced by the sale or sales which may be made of the undivided third part or share of the said messuage farm and hereditaments comprised in the first hereinbefore recited indenture of even date herewith or any part thereof in pursuance of the trusts or direction in that behalf declared and contained in the same indenture upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that they the said (*T.*) and the survivor of them and the heirs executors and administrators of such survivor

Declaration of
 trusts of money
 to arise from
 sale of real
 estate.

their or his assigns do and shall in the first place by and out of the same monies reimburse themselves respectively or pay and discharge all the costs charges and expenses attending such sale or sales or relating thereto And do and shall with the consent in writing of the said (*I. H.*) and (*I. W.*) and the survivor of them during their joint lives and the life of the survivor of them and after the decease of such survivor at the discretion of the said trustees or trustee for the time being lay out and invest all the surplus or residue of the said monies in their or his names or name in the purchase of a share or shares of any of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England or Wales but not upon real securities in Ireland [or "on the security of the bonds or debentures of any public company incorporated by act of parliament and having two thirds at least of its capital paid up or on mortgage of the share or shares in any such last mentioned company paying a competent dividend"(a)] And do and shall from time to time with such consent or at such discretion as aforesaid alter vary and transpose the said stocks funds and securities into or for other stocks funds or securities of the same or the like denomination And do and shall pay the interest dividends and annual proceeds of the said trust monies stocks funds and securities unto the said (*I. H.*) and his assigns for and during his natural life and from and after his decease to the said (*I. W.*) in case she shall survive the said (*I. H.*) and her assigns for and during her natural life and from and after the decease of the survivor of the said (*I. H.*) and (*I. W.*) do and shall stand possessed of and interested in the said trust monies stocks funds and securities *In trust* for all and every the children and child (b) or such one or more exclusively of the others or other of the children and child of the said (*I. H.*) by the said (*I. W.*) his intended wife at such age day or time or respective ages days or times and if more than one in such shares and proportions and with such annual sums of money and limitations over for the benefit of the said children or some or one of them and with such provisions for their respective maintenance and education or advancement or preferment in the world and upon such conditions with such

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

Trust for children, as parents shall appoint.

(a) When it is intended to confine the power to invest to real or government securities, the words in brackets are to be omitted.

(b) Where the power of appointment is to extend to the issue of children born in the lifetime of the parents, see the next Form, pp. 1421—1423.

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

In default of
joint appoint-
ment, as sur-
vivor shall ap-
point by deed
or will.

In default of
appointment
for all children
equally.

Appointed
shares to be
brought into
hotchpot.

Power of ad-
vancement.

restrictions and in such manner as the said (*I. H.*) and (*I. W.*) shall during their joint lives by any deed or deeds with or without power of revocation and new appointment to be by them sealed and delivered in the presence of and attested by two or more credible witnesses jointly direct or appoint and in default of such joint direction or appointment and so far as every or any such direction or appointment shall not extend then as the survivor of them the said (*I. H.*) and (*I. W.*) shall by any deed or deeds with or without power of revocation and new appointment to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses or by his or her last will and testament in writing or any codicil or codicils thereto or any writing or writings in the nature of or purporting to be a will or codicil to be by him or her signed in the presence of and to be attested by two or more credible witnesses from time to time direct or appoint and in default of such direction or appointment and so far as every or any such direction or appointment shall not extend *In trust* for all and every the children and child of the said (*I. H.*) by (*I. W.*) his intended wife who being a son or sons shall attain the age of twenty-one years and who being a daughter or daughters shall attain that age or marry under that age to be divided between or amongst them if more than one in equal shares and if there shall be but one such child then the whole to be in trust for that one child *And* it is hereby agreed and declared that in default of any such direction or appointment as aforesaid to the contrary no child or children taking any part of the said trust monies stocks funds or securities under or by virtue of any direction or appointment to be made by the said (*I. H.*) and (*I. W.*) his intended wife or the survivor of them in pursuance of the powers or authority hereinbefore in that behalf contained or either of them shall have or be entitled to any share of or in that part of the said trust monies stocks funds or securities of which no such direction or appointment shall have been made as aforesaid without bringing his her or their appointed share or shares into hotchpot and accounting for the same accordingly *And* it is hereby agreed and declared that it shall and may be lawful for the said trustees or the trustees or trustee for the time being of these presents at any time or times after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) or during the lives of them or the life of the survivor of them in case they he or she shall so direct by any writing or writings under their his or her

hands or hand to levy and raise any part or parts of the then expectant or presumptive or then vested portion or portions of any child or children of the said intended marriage under the trusts hereinbefore declared not exceeding in the whole for any one such child one moiety or equal half part or share of his or her then expectant or presumptive or then vested portion and to pay and apply the same for his her or their preferment advancement or benefit in such manner as the said trustees or the trustees or trustee for the time being of these presents shall in their or his discretion think fit *And* it is hereby agreed and declared between and by the parties to these presents that the said trustees or trustee for the time being of these presents do and shall after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) pay or apply the whole or such part as the said trustees or trustee shall think fit of the interest dividends and annual proceeds of the portion or respective portions to which any child or children of the said intended marriage shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared for or towards the maintenance and education of such child or children respectively in the meantime and until such his her or their portion or portions shall become payable and that the said trustees or trustee may either themselves or himself so pay or apply the same or may pay the same to the guardian or guardians of such child for the purpose aforesaid without seeing to the application thereof *And* do and shall from time to time lay out and invest all the residue of the same annual proceeds (if any) and all the resulting income thereof in the names or name of the said trustees or trustee for the time being in any of the aforesaid stocks funds or securities so that the same may accumulate in the nature of compound interest and do and shall from time to time alter vary and transpose the stocks funds and securities in or upon which such annual proceeds or accumulations may for the time being be invested for or into other stocks funds and securities of the same or a like nature at their or his discretion and shall stand possessed of the said annual proceeds and accumulations and the stocks funds and securities in which the same shall be from time to time invested and the annual proceeds thereof upon and for such and the same trusts intents and purposes as are herein declared and contained of and concerning the fund or funds from which the same shall have respectively proceeded

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

Maintenance
during minority.

Accumulation
clause.

No. DCXIX.
*Of Monies
 arising from
 Sale of Real
 Estate, and
 Mortgage Debt.*

Trusts if no
 child of mar-
 riage.

Declaration
 that until sale
 of lands rents
 to be applied.

Declaration of
 trust as to the
 mortgage
 money.

yet so nevertheless that it shall be lawful for the said trustees or trustee for the time being at their or his discretion to resort to the accumulation of any preceding year or years and to apply the same towards the maintenance and education in any succeeding year or years of the child or children for the time being respectively entitled thereto in expectancy under the trusts herein contained *And* it is hereby agreed and declared that if there shall not be any child of the said intended marriage who being a son shall attain the age of twenty-one years or who being a daughter or daughters shall attain that age or marry under that age then and in such case (subject and without prejudice to the trusts hereinbefore declared) the said trustees or trustee for the time being or the survivor of them or the executors administrators or assigns of such survivor shall from and after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) and such default or failure of children of the said intended marriage as aforesaid stand and be possessed of and interested in all and singular the said trust monies stocks funds and securities and the interest dividends and annual proceeds thereof or such part or parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein declared in trust for the said (*I. H.*) his executors administrators and assigns *And* it is hereby agreed and declared between and by the parties to these presents that in the meantime and until the said undivided third part or share and hereditaments comprised in the said first hereinbefore recited indenture of even date herewith shall be sold and disposed of in pursuance of the trusts thereby declared the said (*T.*) and the survivor of them and the heirs executors and administrators of such survivor their or his assigns do and shall pay and apply the rents issues and profits of the same premises or so much thereof as for the time being shall not have been sold (after payment thereof of all rates taxes costs for repairs and other outgoings which any tenant or other person shall not be liable to pay) to the person or persons and in the manner to whom or in which the interest and annual proceeds of the monies to arise from the sale thereof and of the stocks funds and securities in or upon which the same is hereinbefore directed to be invested would for the time being be payable or applicable under the trusts hereinbefore declared in case such sale had then actually been made *And this Indenture* (being the indenture referred to by the said secondly hereinbefore

recited indenture of even date herewith) *further witnesseth* and it is hereby agreed and declared between and by the parties to these presents that the said (*T.*) and the survivor of them and the executors or administrators of such survivor their or his assigns shall stand and be possessed of and interested in the sum of £ and interest assigned by the last mentioned indenture or intended so to be upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed declared or contained of and concerning the same (that is to say) *In trust* for the said (*I. W.*) her executors administrators and assigns in the meantime and until the said intended marriage shall be had and solemnized And from and after the solemnization thereof *Upon trust* that they the said (*T.*) and the survivor of them and the executors or administrators of such survivor their or his assigns do and shall either permit the said sum of £ to remain at interest on the security on which the same doth now stand secured or do and shall (with the consent in writing of the said (*I. H.*) and (*I. W.*) his intended wife or the survivor of them during their joint lives and the life of the survivor of them and after the decease of such survivor at the discretion of the said trustees or trustee for the time being) call in compel payment of and receive the same sum of £ or any part or parts thereof and lay out and invest the same in their or his names or name in the purchase of a share or shares of any of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England or Wales but not in real or other securities in Ireland and do and shall from time to time with such consent or at such discretion as aforesaid alter vary and transpose the same stocks funds and securities as they or he shall think fit *And* do and shall stand possessed of and interested in the said sum of £ and the stocks funds and securities in or upon which the same or any part thereof shall be laid out and invested and the interest dividends and annual proceeds of the same respectively upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter declared or referred to concerning the same (that is to say) *Upon trust* that they the said (*T.*) or the survivor of them and the executors administrators and assigns of such survivor do and shall during the joint lives of the said (*I. W.*) and (*I. H.*) pay the interest dividends and annual proceeds of

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

Trust either to
permit mort-
gage to remain
or to call it in.

Trust to pay
dividends to
wife for her
separate use.

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

Trust to pay
dividends to
survivor of
husband and
wife for life.

After death of
survivor.

Upon same
trusts as before
declared.

If no children
of marriage.

all and singular the said last mentioned trust monies stocks funds and securities as and when the same respectively shall become due and payable to such person or persons only and for such intents and purposes only as she the said (*I. W.*) notwithstanding her said intended coverture and as if she were sole and unmarried shall from time to time by any writing or writings signed by her with her own hand but not so as to alien dispose of or affect the same by any sale mortgage or charge or otherwise by way of anticipation direct or appoint and in default of such direction or appointment into the proper hands of her the said (*I. W.*) for her sole and separate use and benefit independently and exclusively of the said (*I. H.*) and without being in anywise subject to his debts control interference or engagements and the receipts of the said (*I. W.*) or of her appointees notwithstanding her coverture after the same interest dividends and annual proceeds shall have become due and payable to be from time to time effectual discharges for the same or for so much thereof as in such receipts respectively shall be acknowledged to be received *And* do and shall from and after the decease of such one of them the said (*I. W.*) and (*I. H.*) as shall first depart this life pay the interest dividends and annual proceeds of all and singular the said last mentioned trust monies stocks funds and securities to or permit the same to be received by the survivor of them the said (*I. H.*) and (*I. W.*) and his or her assigns during his or her life for his or her proper use and benefit *And* do and shall from and after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) stand and be possessed of and interested in all and singular the same trust monies stocks funds and securities and the interest dividends and annual proceeds thereof *Upon* and for the same trusts intents and purposes and under and subject to the same powers provisoes and declarations in favour of the children or child of the said intended marriage as are hereinbefore expressed declared and contained of or concerning the trust monies stocks funds and securities the trusts whereof are first hereinbefore declared *And* it is hereby agreed and declared that if there shall not be any child of the said intended marriage who being a son shall attain the age of twenty-one years or who being a daughter shall attain that age or marry under that age then and in such case (subject and without prejudice to the trusts hereinbefore declared) the said trustees or trustee for the time being shall from and after the decease of the survivor

of them the said (*I. W.*) and (*I. H.*) and such default or failure of children of the said intended marriage as aforesaid stand and be possessed of and interested in the said sum of £ and all and singular the said stocks funds and securities in or upon which the same sum or any part thereof shall be laid out and invested and the interest dividends and annual proceeds thereof or such part or parts thereof respectively as shall not have become vested or been applied or disposed of under any of the trusts or powers herein declared upon the trusts following (that is to say) *If* the said (*I. W.*) shall survive the said (*I. H.*) *In trust* for the said (*I. W.*) her executors administrators or assigns *But* if the said (*I. W.*) shall die in the lifetime of the said (*I. H.*) then in trust for such person or persons and for such intents and purposes and in such manner and form as the said (*I. W.*) notwithstanding her said intended coverture shall by her last will and testament in writing or any codicil or codicils thereto or any writing or writings in the nature of or purporting to be a will or codicil to be signed by her in the presence of and to be attested by two or more credible witnesses direct or appoint and in default of such direction or appointment or so far as any such direction or appointment shall not extend *In trust* for the person or persons who at the time of the decease of the said (*I. W.*) or which shall last happen such failure of children of the said intended marriage shall be of her blood and in kin to her and who either in his or her or their own right or in right of his her or their representation would be entitled to the same under the Statutes for the Distribution of the Effects of Intestates in case the said (*I. W.*) had at that time died intestate and without being under coverture and if there shall be more than one such person then in such parts shares and proportions as they would be entitled to the same under the said statutes [*Trustees' receipts to be good discharges, ante, p. 1396*] *Provided always* and it is hereby agreed and declared that if the said trustees hereby appointed or either of them or any future trustee or trustees to be appointed as hereinafter is mentioned shall die go to reside beyond seas or desire to be discharged from or decline or become incapable to act in the trusts aforesaid before the same shall be fully executed or performed then and in every such case and so often as the same shall happen it shall and may be lawful for the said (*I. H.*) and (*I. W.*) his intended wife [*or* "the survivor of them or the executors or administrators of such survivor"] [*or* "and after the death of such sur-

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

Trust for wife
absolutely if
she survives.

If wife dies in
husband's life-
time, upon
such trusts as
wife shall ap-
point by will.

In default of
appointment,
trust for next
of kin of wife.

Power to
appoint new
trustees.

No. DCXIX.

*Of Monies
arising from
Sale of Real
Estate, and
Mortgage Debt.*

vivor for the surviving or continuing trustees or trustee for the time being (and for this purpose every refusing or retiring trustee shall if willing to act in the execution of this power be considered a continuing trustee) or for the acting executors or executor administrator or administrators of the last surviving or continuing trustee"] by any deed or deeds instrument or instruments in writing duly executed to appoint any other person or persons to be a trustee or trustees in the stead or place of the trustee so dying going to reside beyond seas or desiring to be discharged or declining or becoming incapable to act as aforesaid And upon every or any such appointment the number of trustees may be augmented or reduced And upon every such appointment all the trust estates monies and premises then vested in the trustees or trustee for the time being or in the heirs executors or administrators of the last surviving or continuing trustee shall be with all convenient speed assigned and transferred in such manner and so as that the same may be vested in such new trustee or trustees jointly with the surviving or continuing trustee or trustees or in such new trustee or trustees solely as the occasion may require upon the trusts hereinbefore declared of and concerning the same or such of them as shall be then subsisting and capable of taking effect And it is hereby agreed and declared that all and every such new trustee or trustees shall and may in all things as well before as after the said trust premises shall be vested as aforesaid act or assist in the management carrying on and execution of the aforesaid trusts in conjunction with the other then surviving or continuing trustee or trustees if there shall be any such continuing trustee if not then by himself or themselves as fully and effectually and with the same powers and authorities and discretion whatsoever to all intents and purposes whatsoever as if he or they had been originally in and by these presents nominated a trustee or trustees and as the trustee or trustees in or to whose place such new trustee or trustees shall respectively come or succeed could or might have done if then living and continuing to act in the aforesaid trusts [*Trustees' indemnity, see ante, p. 1398*].



No. DCXX.

Settlement of Stock, Policy of Insurance and Share of Wife in a Residuary Estate under a Will, Covenant to settle future Property of Wife, and Assignment of Wife's Jewels.

No. DCXX.

Stock, Policy of Insurance, Residuary Share, &c.

This Indenture made &c. Between (intended husband) of &c. of the first part (intended wife) of &c. of the second part and (trustees) of &c. of the third part Whereas a marriage is intended to be shortly had and solemnized between the said (I. H.) and the said (I. W.) And whereas by an instrument or policy of insurance [recite policy of insurance on husband's life, ante, p. 412] And whereas (testator) duly made and signed his last will and testament in writing dated the day of and thereby gave and bequeathed &c. [recital of residuary bequest to trustees, upon trust for one for life, with remainder to his children, the intended wife being one of them, equally, with benefit of survivorship amongst them] And whereas [recite death of testator and probate of his will] And whereas the said (I. H.) is now entitled to the capital sum of £

Recitals.

Three per Cent. Consolidated Bank Annuities which was lately standing in his name in the books of the Governor and Company of the Bank of England And whereas upon the treaty for the said intended marriage it was agreed that the said (I. H.) should assign the said policy of insurance unto the said (T.) their executors administrators and assigns And that the said sum of £

Three per Cent. Consolidated Bank Annuities should be transferred into the names of the said (T.) upon the trusts hereinafter declared of and concerning the same And whereas in pursuance of the said agreement the said sum of £

Three per Cent. &c. with the consent and approbation of the said (I. W.) testified by her being a party to and executing these presents has been accordingly transferred by or by the order of the said (I. H.) into the names of the said (T.) in the books of the Governor and Company of the Bank of England And whereas upon the treaty for the said intended marriage it was agreed that the said (I. W.) should assign all her share right and interest of and in the said residuary personal estate and effects of the said (testator) unto the said (T.) upon and for the trusts intents and purposes hereinafter expressed declared or referred to concerning the same And it was further agreed that the said (I. W.) should assign unto the said (T.) all the jewels diamonds

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

Testatum.

Trusts declared
 of the stock.

pearls and trinkets of or to which the said (*I. W.*) is now possessed or entitled upon the trusts and for the intents and purposes hereinafter expressed and declared of and concerning the same *Now this Indenture witnesseth* That in pursuance and performance of the said recited agreement and in consideration of the said intended marriage it is hereby agreed and declared between and by the parties to these presents that the said (*T.*) their executors administrators and assigns shall stand and be possessed of and interested in the said sum of £ Three per Cent. Consolidated Bank Annuities so transferred to them the said (*T.*) as hereinbefore is mentioned and of and in the dividends interest and annual proceeds thereof in trust for the said (*I. H.*) his executors administrators and assigns in the meantime and until the said intended marriage shall be had and solemnized and from and after the solemnization thereof upon trust that they the said (*T.*) and the survivor of them and his executors or administrators their or his assigns do and shall either permit and suffer the said sum of £ &c. to remain in their actual state of investment or do and shall at any time or times (with the consent in writing of the said (*I. H.*) and (*I. W.*) his intended wife during their joint lives and after the decease of either of them with the consent in writing of the survivor of them during his or her life and after the decease of such survivor at the discretion of the said trustees or trustee for the time being) sell transfer or dispose of the same or any part or parts thereof for such price or prices as they or he shall think fit and do and shall with such consent or at such discretion as aforesaid lay out or invest the money to arise by or from such sale transfer or disposition in their or his names or name in the purchase of a competent share or competent shares of any of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England but not on real securities in Ireland [or in or upon the stocks funds shares loan notes debentures mortgages or securities of any company incorporated by act of parliament and paying a competent dividend] and do and shall from time to time with such consent or at such discretion as aforesaid alter vary and transpose the said stocks funds and securities as to them or him shall seem proper and do and shall stand and be possessed of and interested in all and singular the said trust monies stocks funds and securities and the dividends interest and annual proceeds thereof upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations

hereinafter declared and contained of and concerning the same (that is to say) Upon trust that the said trustees or trustee for the time being do and shall pay the interest dividends and annual proceeds of the said trust monies stocks funds and securities to or permit the same to be received by the said (*I. H.*) and his assigns during his natural life and after his decease by the said (*I. W.*) and her assigns during her natural life and after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) do and shall stand possessed of and interested in all the said trust monies stocks funds and securities and the interest dividends and annual proceeds thereof *In trust* for all and every or such one or more exclusively of the others or other of the children or grandchildren or other issue of the said (*I. H.*) and (*I. W.*) (such grandchildren or other issue to be born in the lifetime of the said (*I. H.*) and (*I. W.*) or one of them) at such age day or time or respective ages days or times not more remote than twenty-one years to be computed from the decease of the survivor of the said (*I. H.*) and (*I. W.*) for such interest or interests and if more than one in such parts shares and proportions and subject to such conditions restrictions and limitations over for the benefit of such children grandchildren or other issue or some or one of them and with such provisions for their respective maintenance education and advancement in the world and in such manner as the said (*I. H.*) and (*I. W.*) shall at any time or from time to time during their joint lives by any deed or deeds either with or without power of revocation and new appointment (such new appointment to be in favour of some or one of the objects of this present power) to be duly executed by them shall jointly direct or appoint and in default of such joint direction or appointment and so far as any such joint direction or appointment shall not extend then as the survivor of them the said (*I. H.*) and (*I. W.*) shall by any deed or deeds with or without power of revocation and new appointment (such new appointment to be in favour of some or one of the objects of this present power) to be by him or her duly executed or by his or her last will and testament in writing or any codicil or codicils thereto or any writing or writings in the nature of or purporting to be a will or codicil to be by him or her duly signed and attested from time to time direct or appoint [*The following within brackets is sometimes introduced*] [*Provided nevertheless* that no child or more remote issue of the said intended marriage shall take an absolute interest under any such direction or appointment as aforesaid until such child being

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

Trusts for children and issue as parents or survivor shall appoint.

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Trust for children in default of appointment.

Hotchpot clause.

Maintenance.

a male shall attain the age of twenty-one years or being a female shall attain that age or marry under that age which shall first happen] (a) And in default of such direction or appointment and so far as any such direction or appointment shall not extend *In trust* for all and every the children and child of the said (I. H.) by the said (I. W.) his intended wife who being a son or sons shall attain the age of twenty-one years or who being a daughter or daughters shall attain that age or marry under that age to be divided between or amongst them if more than one in equal shares and if there shall be but one such child then the whole to be in trust for that one child And it is hereby agreed and declared that no child who or whose issue shall take any part of the said trust monies stocks funds or securities under any direction or appointment to be made in pursuance of either of the powers hereinbefore contained (unless the same shall be expressly directed by any such direction or appointment) shall have or be entitled to any further or other share of the unappointed part of the said trust monies stocks funds or securities without bringing the share or shares appointed to him or her or his or her issue into hotchpot and accounting for the same accordingly And it is hereby further agreed and declared that in case at the decease of the survivor of them the said (I. H.) and (I. W.) any of the children grandchildren or other issue of the said intended marriage who under the trusts hereinbefore contained or under any appointment or appointments to be made in his her or their favour by virtue of either of the powers hereinbefore contained shall be entitled to any vested or presumptive share or respective shares of the said trust monies stocks funds or securities shall being a male or males not have attained the age of twenty-one years or being a female or females not have attained that age or been married under that age then (subject and without prejudice to any direction which may be made by any such appointment or appointments as aforesaid) it shall

(a) See 9 Jarm. Conv. 324. The object of this clause is to prevent the father from appointing to an object of the power who is very young and in precarious health, and to prevent the appointed share devolving upon the father as the personal representative of such object. It may well be doubted whether an appointment made with such a view would not be void, as a fraud upon the power. A parent having a power to fix the time when portions are to be raised, cannot appoint an immediate portion to an infant not in want of it with a view to become entitled to it himself as her personal representative in case of her death, *Hinchinbroke v. Seymour*, 1 Br. C. C. 395; see 11 Ves. 479; 1 Russ. & M. 436; 2 Sugd. on Pow. 194, 7th ed.

be lawful for the trustees or trustee for the time being of this settlement in their or his discretion from time to time after the decease of the survivor of the said (*I. H.*) and (*I. W.*) to apply all or any part of the yearly dividends interest or annual proceeds of the share or presumptive share of each such child grandchild or issue being a male during his minority and being a female during her minority and discoveriture in or towards his or her maintenance and education or otherwise for his or her benefit in such manner as the said trustees or trustee shall think proper *And* that subject as aforesaid so much (if any) of the dividends interest or annual proceeds arising from the share or presumptive share of each such child grandchild or issue respectively as shall not be so applied as aforesaid shall be improved at interest and accumulated and the accumulations thereof be added to the principal of the share whence the same shall have arisen and be subject to all the trusts provisions and agreements affecting the same share but nevertheless it shall be lawful for the said trustees or trustee in their or his discretion to apply the whole or any part of such accumulated fund in or towards the subsequent or future maintenance and education of the respective child or remoter issue from whose share or presumptive share the same may have arisen *And* it is hereby further agreed and declared That it shall be lawful for the said trustees or trustee for the time being during the lives of the said (*I. H.*) and (*I. W.*) and the life of the survivor of them with their his or her consent in writing and after the death of such survivor then in the discretion of the said trustees or trustee (subject nevertheless to any contrary direction in any such appointment or appointments which may be made as aforesaid) to apply any part not exceeding one half of the principal or value of the vested or presumptive share of each or any of the children grandchildren or issue of the said intended marriage in or towards the advancement or preferment in the world or otherwise for the benefit of the child grandchild or issue to whom each such share shall actually or presumptively belong *And* it is hereby agreed and declared &c. [*If no child of marriage, trust for husband, see ante, p. 1414*] *And* it is hereby agreed and declared that it shall and may be lawful for the said (*T.*) or the survivor of them his executors or administrators their or his assigns at the request in writing of the said (*I. H.*) and (*I. W.*) during their joint lives and after the decease

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Accumulation.

Advancement.

Power to lay
out money in
purchase of
lands.

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

of such of them as shall first depart this life at the request in writing of the survivor of them to call in and convert into money the said trust monies stocks funds and securities or any part thereof and to lay out and invest the money to be produced thereby in the purchase of any freehold or copyhold messuages lands tenements or hereditaments in England or Wales of an estate of inheritance or of any leasehold messuages lands or tenements in England or Wales for any term of years whereof not less than years shall be to come and unexpired at the time of such purchase to be conveyed surrendered or assigned to the said (*T.*) or the survivor of them their or his heirs executors administrators or assigns respectively according to the nature of the estate or interest therein Upon trust nevertheless that they the said (*T.*) and the survivor of them and the heirs executors administrators or assigns of such survivor shall with the consent in writing of the said (*I. H.*) and (*I. W.*) during their joint lives and after the decease of such of them as shall first depart this life with the consent in writing of the survivor of them and after the decease of such survivor then at the discretion and of the proper authority of the said (*T.*) or the survivor of them or the heirs executors administrators or assigns of such survivor do and shall sell and dispose of the said messuages lands tenements or hereditaments which shall have been so purchased as aforesaid either altogether or in parcels and either by public sale or private contract for such price or prices as can be at the time of such sale reasonably had or gotten for the same and subject to such conditions and with such stipulations as to title or otherwise and in such manner in every respect as the said trustees or trustee for the time being shall think fit with power to buy in the same at any such sale by auction and to resell the same without being answerable for any loss which may happen in consequence thereof And upon trust that they the said trustees or trustee for the time being do and shall apply the money arising from such sale or sales (after payment of the costs charges and expenses attending the same) upon and for such and the same trusts and under and subject to such and the same powers provisoes agreements and declarations as the money so raised and laid out in the purchase of such messuages lands or tenements was subject to before such purchase was made or would have been subject to if the same had not been laid out therein and do and shall in the meantime and until such messuages lands tenements or hereditaments shall be so sold apply the rents and profits thereof in such manner as the

Rents of purchased lands to be applied as income of money invested.

interest dividends and annual proceeds of the money laid out in the purchase thereof would have been applicable under the trusts hereinbefore declared in case such purchase had not been made It being hereby agreed and declared that the said messuages lands tenements and hereditaments so to be purchased under this present power as aforesaid shall when so purchased be considered as money and be subject to such and the same trusts in all respects as the money laid out in the purchase thereof was subject to before such purchase was made or would have been subject to if the same had not been laid out *And* with power for the said (*T.*) and the survivor of them and the heirs executors administrators or assigns respectively of such survivor with the consent in writing of the said (*I. H.*) and (*I. W.*) during their joint lives and after the decease of such of them as shall first depart this life with the consent in writing of the survivor of them and after the decease of such survivor then at the discretion of the said trustees or trustee for the time being to lease the said messuages lands tenements and hereditaments so to be purchased as aforesaid or any part thereof for any term or number of years not exceeding years to take effect in possession at such rent as they or he shall think reasonable and under the other usual restrictions *And this Indenture further witnesseth* That in pursuance of the said recited agreement and in consideration of the said intended marriage he the said (*I. H.*) with the privity and approbation of the said (*I. W.*) testified by her executing these presents *Doth* hereby bargain sell and assign unto the said (*T.*) their executors administrators and assigns *All* that the said recited policy of insurance and the full benefit thereof and the said sum of £ originally insured thereby and all and every other the sums and sum of money which by way of bonus or otherwise have accumulated or may hereafter accumulate or become payable under the said policy or by virtue thereof *And* all the estate right title interest property possibility claim and demand whatsoever at law or in equity of the said (*I. H.*) of in out or upon the same premises and every part thereof Together with full absolute and irrevocable power and authority for the said (*T.*) and the survivor of them and the executors or administrators of such survivor their or his assigns to ask demand sue for recover and receive the monies to become payable under the said policy and to give effectual discharges for the same which receipts it is hereby declared shall effectually release the persons

No. DCXX.
*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Power to lease
purchased
lands.

Assignment of
policy to trus-
tees.

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

paying such monies from all obligation of seeing to the application thereof or of any part thereof and from all liability by reason of the misapplication or nonapplication of the same or any part thereof *To have hold receive and take* the said policy of insurance sum and sums of money and all other the premises hereinbefore assigned or intended so to be unto the said (*T.*) their executors administrators and assigns *In trust* for the said (*I. H.*) his executors administrators and assigns absolutely in the meantime and until the said intended marriage shall be solemnized and from and after the solemnization thereof upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that the said trustees or trustee for the time being of these presents do and shall after the decease of the said (*I. H.*) call in and receive the sum and sums of money which shall or may become due and payable under or by virtue of the said policy of insurance and do and shall lay out and invest the same in the purchase &c. (see *ante*, pp. 1411, 1420) and do and shall from time to time with the consent in writing of the said (*I. W.*) during her life and after her decease at the discretion of the said trustees or trustee for the time being alter vary and transfer the same stocks funds and securities as to them or him shall seem proper *And* do and shall stand and be possessed of and interested in the said sum and sums of money to become payable under or by virtue of the said policy of insurance as aforesaid and the stocks funds and securities in or upon which the same shall be laid out and invested and the interest dividends and annual proceeds thereof upon and for such of the trusts intents and purposes and with under and subject to such of the powers provisoes agreements and declarations hereinbefore declared and contained of or concerning the said sum of £ Three per Centum &c. and the dividends interest and annual proceeds thereof as shall or may be subsisting and capable of taking effect *And* the said (*I. H.*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*T.*) their executors and administrators that if the said intended marriage shall be solemnized he the said (*I. H.*) will not do or suffer anything whereby the said policy of insurance hereby assigned or intended so to be may become void or voidable and will during his life duly and punctually pay the annual premium

Covenants by
husband to
keep policy on
foot, &c. (a).

(a) See 1 Davidson's Conv. pp. 304, 305, 2nd edit.

and such other sum or sums of money (if any) as shall become payable for keeping on foot the said policy of insurance or any policy or policies to be effected as hereinafter provided or for restoring the same respectively if the same respectively shall have become voidable and in case the said policy or policies effected as hereinafter provided shall become void will effect a new policy or policies of insurance with such office or offices as the said trustees or trustee for the time being shall direct and in their or his names or name on the life of him the said (*I. H.*) in such sum or sums of money as shall be or amount to the sum which would have been payable under the policy or policies so become void if the said (*I. H.*) had then died and will deliver every such future policy and the receipt for every such payment as aforesaid to the said trustees or trustee for the time being and will not do or suffer any act or thing whereby or by means whereof the said trustees or trustee for the time being may be prevented or hindered from recovering or receiving any of the monies intended to be assured by the said policy or policies respectively or any part or parts thereof respectively *Provided always* and it is hereby agreed and declared that it shall be lawful for the said trustees or trustee for the time being if they or he shall in their or his absolute discretion think fit at any time or times to apply any part or parts of the interest dividends or annual proceeds of the said sum of £

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Power for the trustees to apply interest and capital of trust funds to keep up policies.

Three per Centum Consolidated Bank Annuities and the stocks funds and securities in or upon which the same may be invested or if the same shall be insufficient then any part of the capital of the same trust monies stocks funds and securities in payment of the annual premium or other the sum or sums of money which shall become payable for keeping on foot or restoring the subsisting policy of insurance or for effecting or keeping on foot or restoring any such new policy or policies of insurance as aforesaid *And* it is hereby agreed and declared that every policy of insurance effected as hereinbefore is provided and the monies to become payable under or by virtue of the same shall be held and applied by the said trustees or trustee for the time being upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations in and by these presents declared of and concerning the said policy of insurance hereby assigned or intended so to be and the monies to become payable under or by virtue of the same *Provided also* nevertheless and it is hereby agreed and declared

Substituted policies to be held on same trusts.

Trustees re-

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*lied from
liability as to
policies.If husband
pays sum
equal to policy
it is to be sub-
stituted there-
fore (a).

Assignment of

that it shall not be obligatory on the said trustees or trustee for the time being to enforce any of the covenants hereinbefore contained in relation to the said subsisting policy of insurance or any such new policy or policies as aforesaid or to apply any part of the said interest dividends annual proceeds trust monies stocks funds and securities in payment of the annual premiums sum or sums of money payable for keeping on foot or restoring the said subsisting policy or for effecting or keeping on foot or restoring any such new policy of insurance as aforesaid unless when called on so to do in any specific case by some person beneficially interested in the premises and that no omission or neglect in that behalf by the said trustees or trustee for the time being (except when called on as aforesaid) shall be chargeable as a breach of trust and that the said trustees or any of them their or any of their executors or administrators shall not be in anywise responsible or accountable for or on account of the said subsisting policy or any such new policy as aforesaid becoming void through any means whatsoever except their or his own omission or neglect when so called on as aforesaid *Provided always* and it is hereby agreed and declared that in case the said (*I. H.*) shall at any time hereafter during his life pay or cause to be paid the sum of £ sterling to the said (*T.*) or the survivor of them or the executors or administrators of such survivor or their or his assigns then and in such case the said trustees or trustee for the time being of these presents shall thenceforth hold the same sum upon and for such trusts intents and purposes and with under and subject to such powers provisoes and declarations as are hereinbefore expressed and declared of and concerning the said policy of insurance hereby assigned or intended so to be and the monies to be received or payable under the same or such of the same trusts intents and purposes powers provisoes and declarations respectively as shall be then subsisting or capable of taking effect and shall thenceforth hold the said policy hereby assigned or intended so to be and any other policy to be effected in pursuance of these presents and the monies to become payable under the same *In trust* for the said (*I. H.*) his executors administrators and assigns absolutely discharged from all and singular the trusts and provisions hereinbefore declared and contained of and concerning the same *And this Indenture further witnesseth That*

(a) See Prideaux Conv. p. 645, 3rd ed.

in pursuance and further performance of the said agreement and in consideration of the said intended marriage she the said (*I. W.*) with the privity and approbation of the said (*I. H.*) testified by his being a party to and sealing and delivering these presents *Doth* by these presents bargain sell and assign unto the said (*T.*) their executors administrators and assigns *All* the part share right title and interest parts shares rights and interests as well vested as contingent to which she the said (*I. W.*) now is or to which she or the said (*I. H.*) in her right shall or may at any time or times hereafter become entitled under and by virtue of the said hereinbefore in part recited will of the said (*testator*) in remainder or reversion expectant on the death of (*tenant for life*) of and in the residue of the personal estate and effects of the said (*testator*) *And all* the right title interest property possibility claim and demand whatsoever of the said (*I. W.*) of in and to the same premises and every part thereof respectively *To have* hold receive and take the said part or share parts or shares and all other the premises lastly hereinbefore assigned or intended so to be unto the said (*T.*) their executors administrators and assigns *Upon* and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed declared and contained of and concerning the same respectively *And* for the considerations aforesaid the said (*I. W.*) with the privity and approbation of the said (*I. H.*) testified as aforesaid *And also* he the said (*I. H.*) do and each of them doth hereby irrevocably nominate and appoint and in their and each of their place and stead put the said (*T.*) and the survivor of them and the executors and administrators of such survivor their and his assigns their and each of their true and lawful attornies and attorney for and in the names and name of them the said (*I. W.*) and (*I. H.*) and either of them or otherwise but upon the trusts hereinafter declared of and concerning the same at any time or times to ask demand sue for recover and receive of and from all and every the person and persons that is or are or shall or may be liable to pay transfer or assign the same respectively the said trust monies and premises lastly hereinbefore assigned or intended so to be and the interest dividends and annual produce of the same *And* on the payment transfer or assignment thereof or of any part or parts thereof respectively to give sign and execute any receipt or receipts release or releases or other good and effectual discharge or discharges for the same *And* on refusal or neglect to pay transfer

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

wife's share in
residuary es-
tate.

Power of attor-
ney.

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

or assign the same or any of them or any part or parts thereof respectively to bring commence carry on and prosecute any action or actions suit or suits or other proceeding or proceedings whatsoever and generally to do execute and perform any other act deed matter or thing whatsoever relative to the receipt or recovery of the same trust monies and premises respectively and the interest dividends and annual produce of the same or any part or parts thereof respectively as fully and absolutely to all intents and purposes as they the said (*I. W.*) and (*I. H.*) or either of them might or could have done in their his or her proper person in case these presents had not been executed and the said intended marriage had not been solemnized And it is hereby agreed and declared that the said (*T.*) their executors administrators and assigns shall stand and be possessed of and interested in the said monies and premises lastly hereinbefore assigned or intended so to be *In trust* for the said (*I. W.*) her executors administrators and assigns absolutely in the meantime and until the said intended marriage shall be solemnized And from and after the solemnization thereof *Upon trust* that the said (*T.*) and the survivor of them and the executors or administrators of such survivor their or his assigns do and shall call in receive and convert into money the same monies and premises when and as the same shall be or become due or payable or transferable to them or him and lay out and invest the monies so to be received or to arise from such conversion into money in their or his names or name in the purchase &c. (*ante*, p. 1420) And do and shall stand possessed of and interested in all and singular the said last mentioned trust monies and the stocks funds and securities in or upon which the same shall be laid out and invested and the interest dividends and annual proceeds thereof (*a*) *Upon* and for such and the like trusts intents and purposes and with under and subject to such and the like powers provisoes agreements and declarations as are hereinbefore expressed declared and contained of and concerning the sum of £ Three per Cent. Consolidated Bank Annuities and the interest dividends and annual proceeds thereof or such of them as shall or may be subsisting undetermined or capable

Declaration of trusts.

Trust after marriage to call in, &c.

Trusts declared by reference.

(a) If the trusts are to be more in favour of the wife, see *ante*, pp. 1415, 1416. It is usual, in settling the wife's property, to give her the power of disposing of it in the event of there being no children of the marriage who shall acquire a vested interest. See *ante*, p. 1417.

of taking effect *And* the said (*I. H.*) and (*I. W.*) do hereby jointly, for themselves their heirs executors and administrators and each of them *Doth* hereby separately for himself and herself his and her heirs executors and administrators covenant and agree with the said (*T.*) their executors administrators and assigns That if during the said intended coverture or at any time after the said intended marriage the said (*I. W.*) or the said (*I. H.*) in her right shall at any one time become entitled by descent transmission claim devise bequest gift donation representation or otherwise for any estate or interest whatsoever to any real or personal property not hereby otherwise settled (except such interests as shall be settled to her separate use and disposal and except plate and jewels) which shall amount or be equal in value to the sum of £100 of lawful money of Great Britain then and in every such case the said (*I. H.*) and (*I. W.*) shall and will at the costs and charges of the said trust estate from time to time as soon as the case will admit by good and effectual conveyances assignments and assurances or other acts and deeds in the law to the satisfaction of the said trustees or trustee for the time being of these presents or their or his counsel in the law convey assign settle and assure or otherwise cause to be well and effectually vested in the said trustees or trustee for the time being according to the nature and quality thereof *All* and singular the said property to which the said (*I. W.*) or the said (*I. H.*) in her right shall so become entitled as aforesaid (except as aforesaid) for all her estate and interest therein upon the trusts following (that is to say) As to such parts or part of the same property as shall not consist of money (other than any annuity or annuities or other property to which the said (*I. W.*) or (*I. H.*) in her right may be or become entitled to and for the life of the said (*I. W.*) only or for any term of years determinable on her death) to sell and absolutely to dispose of the same property either entirely or altogether or in parcels and either by public auction or private contract for such price or prices as to them or him shall seem reasonable with power to buy in the said premises or any part thereof at any sale or sales by auction and to rescind abandon or vary any contract for sale and to resell the premises which shall be so bought in or the contract for the sale of which shall be so rescinded or abandoned as aforesaid or any part thereof without being in anywise answerable for any difference of price or loss which may happen thereby respectively *And also* with power to

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

Covenant to
 settle future
 property of
 wife.

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

insert any special or other stipulations in any contract for or conditions of sale either as to title or evidence to title or otherwise and with power for the purposes aforesaid to enter into make execute do and perform all such contracts covenants agreements conveyances assurances acts deeds matters and things as to them or him shall seem reasonable And upon further trust to stand and be possessed of and interested in the monies to arise by such sale disposition and conversion into money *And also* of and in all and singular such parts and part of the said property hereby covenanted to be settled as shall consist of money and the annual income and produce thereof *Upon* and for such trusts intents and purposes as will correspond to the trusts intents and purposes hereby declared concerning the said residuary share of the said (*I. W.*) hereby assigned or intended so to be and the stocks funds and securities in or upon which the same shall be invested or such and so many of the same trusts intents and purposes as shall be then subsisting and capable of taking effect and be subject to the same or the like powers provisoes declarations and agreements as are given and expressed concerning the said last mentioned property or as near thereto as the circumstances of the case and the nature of the property and the rules of law and equity will permit *And* as to any annuity or annuities or other property hereby covenanted to be settled to which the said (*I. W.*) or the said (*I. H.*) in her right shall be entitled for the life of the said (*I. W.*) only or for any term of years determinable on her death *Upon trust* to pay and apply the same annuity or annuities or the annual income and produce of such last mentioned property as the case may be in such and the same manner as the annual income and produce of the said residuary property of the said (*I. W.*) hereby settled shall from time to time be applicable under the trusts hereby declared thereof with power for the said trustees or trustee for the time being at the request in writing of the said (*I. H.*) and (*I. W.*) and of the survivor of them at any time or times to sell the same and with the same powers for that purpose as are hereinbefore covenanted to be given to them and him for the purpose of selling such other parts of the property so covenanted to be settled as last aforesaid so nevertheless that the money to arise from any such sale or sales be held and applied upon and for such and the same trusts intents and purposes as are hereinbefore declared or referred to of and concerning the monies to arise from the sale of the said other parts of the said last mentioned property

Provided always and it is hereby agreed and declared that it shall be lawful for the trustees or trustee for the time being of these presents to settle and ascertain in such manner as they or he shall deem expedient the amount of any monies properties and effects due to or claimed by them or him under or by virtue of the will of the said (*testator*) deceased or by or from any other deed settlement ways and means whatsoever *And also* to pass and allow the accounts of the persons paying over or transferring the same monies properties or effects respectively or any part thereof respectively which the trustees or trustee for the time being of these presents shall deem it expedient to accept in lieu of or satisfaction for the whole *And* to give releases and discharges to the said accounting party or parties as fully and effectually as the trustees or trustee for the time being of these presents might or could do if they or he were absolute beneficial owners or owner of the said properties and effects *And* if any disputes doubts or difficulties shall arise in relation to any sum or sums of money due owing or payable to the said (*I. W.*) or to the said (*I. H.*) in her right or to the trustees or trustee for the time being of these presents under or by virtue of any deed or will or otherwise howsoever then and in that case it shall be lawful for the trustees or trustee for the time being of these presents if they or he shall think proper to refer any such disputes or claims to such person or persons as the said trustees or trustee on the one part and the person or persons from whom such sum or sums of money shall be claimed to be due or payable on the other part shall appoint for that purpose and that the award and the determination of the persons so appointed or of their umpire shall be final and conclusive on all persons entitled to any interest or benefit under or by virtue of these presents *And* that all other differences (if any) which shall arise concerning any property claimed by or belonging to her the said (*I. W.*) or to the said (*I. H.*) in her right or to the trustees or trustee for the time being of these presents under or by virtue of these presents shall be settled or adjusted in the same or like manner if the said trustees or trustee for the time being shall think it requisite and proper so to settle or adjust the same but not otherwise *Provided also* and it is hereby further agreed and declared that it shall be lawful for the said trustees or trustee for the time being of these presents

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Power to ascertain what is due to wife (a).

Power to refer disputes to arbitration.

No. DCXX.
*Stock, Policy
 of Insurance,
 Residuary
 Share, &c.*

Assignment of
 wife's jewels.

In trust for
 separate use
 and disposal by
 wife.

in their or his absolute discretion to postpone suspend and forbear the exercise and enforcement of all or any of the rights powers and remedies hereby vested in or which shall or may accrue to or be exercisable by such trustees or trustee by virtue hereof anything hereinbefore contained or any rule of law or equity to the contrary notwithstanding *And this Indenture further witnesseth* That in pursuance and performance of the said agreement in this behalf and in consideration of the said intended marriage she the said (*I. W.*) with the privity and approbation of the said (*I. H.*) testified by his executing these presents *Doth* hereby bargain sell and assigns unto the said (*T.*) their executors administrators and assigns *All* the jewels diamonds pearls watches and trinkets of or to which she the said (*I. W.*) is now possessed or entitled *And* all the right and title of the said (*I. W.*) in and to the same *To have and to hold* the said jewels diamonds pearls watches and trinkets hereby assigned and every of them unto the said (*T.*) their executors administrators and assigns In trust for her the said (*I. W.*) her executors administrators and assigns in the meantime and until the said intended marriage shall be solemnized and from and after the solemnization thereof *In trust* that they the said (*T.*) and the survivor of them and the executors administrators or assigns of such survivor do and shall permit and suffer the said (*I. W.*) from time to time and at all times during the joint lives of them the said (*I. H.*) and (*I. W.*) To have use and enjoy the said jewels diamonds pearls watches and trinkets hereby assigned to and for her own sole and separate use and benefit exclusively of the said (*I. H.*) her intended husband and without being liable to his control interference debts forfeitures disposal or engagements and with full power for her the said (*I. W.*) to dispose of the same by deed or will or writing in the nature of a will or from hand to hand or otherwise in the same manner as if she were a feme sole And as to such of the same jewels diamonds pearls watches and trinkets (if any) as shall not be so disposed of by the said (*I. W.*) Upon the trusts following (that is to say) If the said (*I. W.*) shall survive the said (*I. H.*) In trust for the said (*I. W.*) her executors administrators and assigns but if the said (*I. W.*) shall die during the lifetime of the said (*I. H.*) In trust to sell and dispose of the same and to stand possessed of the money to arise from such sale upon and for such of the trusts intents and purposes hereinbefore declared concerning the said trust monies stocks

funds and securities as shall be then subsisting or capable of taking effect [*Trustees' receipts to be good discharges, ante, p. 1403. Power to appoint new trustees, ante, p. 1417, and clauses for trustees' indemnity, ante, p. 1398*] And especially it is hereby agreed and declared that it shall be lawful for the said (*one of the trustees*) to make all such and the like charges and to receive such and the like fees and professional emoluments for business professionally transacted for the said trust estate as he would be entitled to make and receive for the business so transacted in case he had not been appointed a trustee by these presents any rule of law or equity to the contrary thereof notwithstanding *In witness &c.*

No. DCXX.

*Stock, Policy
of Insurance,
Residuary
Share, &c.*

Trustee who is
a solicitor au-
thorized to
make pro-
fessional
charges (a).

No. DCXXI.

Voluntary Settlement of Money to arise from the Sale of Real Estates, and of Money secured on Mortgage for the benefit of Settlor's Nephews and Nieces. The shares of Nieces to their separate use with remainder to their Children. Power of Revocation.

No. DCXXI.

Of Money.

This Indenture made &c. between (settlor) of the one part and (two trustees) of the other part Whereas the said (S.) was lately seised of or entitled to a messuage or tenement and certain lands and hereditaments situate at aforesaid as to the freehold parts of the said hereditaments for an estate of inhe-

Settlor seised
of real estate.

(a) If a trustee, who is a solicitor, acts as such in matters relating to the execution of the trust, he is only entitled to be repaid such costs, charges and expenses as he has properly paid out of pocket, *New v. Jones*, 9 Jarm. Conv. 337, 338; *Moore v. Froud*, 3 My. & Cr. 45. But the parties may by contract, properly and distinctly entered into, enable the solicitor to make professional charges for business transacted in the trust, *In re Sherwood*, 3 Beav. 338; *Willes v. Kibble*, 1 Beav. 559; *Moore v. Froud*, 3 My. & Cr. 45. The policy of insurance on the husband's life should be placed in the trustee's hands, and notice of the assignment of it should be given to the insurance office, especially if the intended husband is within the bankrupt laws, in which case such notice is necessary to take the property out of his "order and disposition," 12 & 13 Vict. c. 106, s. 125. See Shelford's Bankrupt Law, pp. 196—200, 2nd edit. Notice of the assignment of the share in the residuary estate should be given to the trustees of the will. See *ante*, pp. 346, 1215.

Costs of trustee, being a solicitor.

Practical directions.

No. DCXXI.
Of Money.

Desire to
 make provision
 for nephews
 and nieces.

Conveyance of
 real estate to
 trustees for
 sale.

ritance in fee simple and as to the copyhold parts thereof for an estate of inheritance to him and his heirs according to the custom of the manor of in the said county of *And whereas* the said (S.) was lately possessed of or entitled to the several sums of £ sterling respectively due owing and secured to him with interest for the same by certain mortgages bonds or other securities *And whereas* the said (S.) being desirous of making some provision for his nephews and nieces hereinafter respectively mentioned (namely) [*names and descriptions of nephews and nieces*] and for their respective children and issue he for that purpose lately agreed and determined to convey surrender and assure the said messuage or tenement lands and hereditaments at aforesaid of or to which he was seised or entitled as aforesaid unto and to the use of the said (T.) their heirs and assigns *Upon trust* but during his life with his consent in writing to sell and dispose of the same and to settle the monies to arise from such sale or sales *Upon the trusts* hereinafter mentioned or referred to *And* he also agreed and determined to assign and transfer the said several and respective sums of £ and the interest thereof and the securities for the same unto the said (T.) their heirs executors administrators and assigns *Upon the trusts* hereinafter also mentioned or referred to *And whereas* in pursuance and part performance of his said recited agreement and determination the said (S.) hath by an indenture of grant bearing date on the day next before the day of the date of these presents and made or expressed to be made between him the said (S.) of the one part and the said (T.) of the other part conveyed and assured and covenanted to surrender the said messuage or tenement lands and hereditaments situate lying and being in aforesaid and containing more or less and in the occupation of &c. unto and to the use of the said (T.) their heirs and assigns for ever *Upon trust* with the consent in writing of the said (S.) during his life and after his decease at their discretion to sell and dispose of the said messuage or tenement lands and hereditaments either by public auction or private contract as in the said indenture of grant now in recital is mentioned and to stand and be possessed of the monies to arise from such sale or sales and of the rents and profits of the said hereditaments and premises in the meantime after deducting and retaining thereout the costs charges outgoings and expenses therein referred to *Upon such trusts* and for such intents and purposes as the said (S.) should declare of

the same with an agreement and declaration that the rents and profits or the residue of the rents and profits of the said hereditaments and premises in the meantime and until sale of the same should belong and be payable and paid to the person or persons who for the time being would be entitled to the dividends interest and income of the money to arise from such sale or sales as aforesaid or of the stocks funds or securities in or upon which the same money was to be invested in case the same had been invested pursuant to directions to be given in that behalf *And whereas* by four several indentures bearing date respectively on the day next before the day of the date of these presents each of the said several indentures being made or expressed to be made between the said (S.) of the one part and the said (T.) of the other part the said several and respective sums of £ &c. of or to which respectively the said (S.) was entitled as aforesaid and the interest thereof and the securities for the same were assured and transferred by him unto the said (T.) their heirs executors administrators and assigns and in and by each of the said four several indentures it was agreed and declared that the said (T.) their executors administrators and assigns should stand and be possessed of the principal money thereby respectively assigned and the interest thereof *Upon trusts* intended to be forthwith declared of the same by the said (S.) and meaning and intending to refer to the trusts declared thereof in these presents *Now this Indenture witnesseth* That in pursuance and further performance of his said hereinbefore recited agreement and determination and for declaring the trusts of the monies to arise or be produced by or from the sale of the messuage or tenement lands and hereditaments comprised in and conveyed and covenanted to be surrendered to the said (T.) their heirs and assigns by the said first hereinbefore in part recited indenture *And also* of the said several and respective sums of £ so respectively assigned to the said (T.) as aforesaid and of the interest and income of the same respectively *And* for and in consideration of the natural love and affection which the said (S.) hath and beareth for or towards his said nephews and nieces the said [*names*] It is hereby agreed and declared by and between the said parties to these presents and the said (S.) *Doth* hereby expressly appoint and direct *That* the said (T.) and the survivor of them his executors or administrators their and his assigns shall stand and be possessed of the monies to arise from the

No. DCXXI.
Of Money.

Assignment of
mortgage debts
to trustees.

Testatum.

Trustees to
stand possessed
of monies to
arise from real

No. DCXXI. sale of the hereditaments aforesaid and which shall remain after payment of the costs and expenses hereinbefore referred to *And*

Of Money.
estate to invest
on real or
government
securities.

also of the said several and respective sums aforesaid so transferred as aforesaid and of the interest and income of the same sums respectively *Upon the trusts* and for the intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that they the said (*T.*) and the survivor of them his executors or administrators their and his assigns do and shall with the consent in writing of the said (*S.*) during his life and after his decease Then at the discretion and of the proper authority of them the said trustees or the survivor of them his executors or administrators their or his assigns lay out and invest the monies to arise from the sale of the hereditaments aforesaid and which shall remain after payment of such costs charges outgoings and expenses as aforesaid *And also* the said several and respective sums of £ when and as the same or any of them or any part thereof shall be received by them or him at interest in their or his names or name either in or upon any of the public stocks or funds of Great Britain or upon government or real securities in England or Wales *And also* do and shall with such consent or at such discretion as aforesaid as the case may require alter vary and change the securities in or upon which the said trust monies or any of them or any part thereof shall from time to time be invested either as occasion shall require or as shall be thought proper or expedient *Provided always* and it is hereby expressly agreed and declared That it shall not be lawful for the said (*T.*) or the survivor of them his executors or administrators their or his assigns to call in or require or attempt to enforce the payment of all or any part of any of the said sums of £ at any time during the life of the said (*S.*) without his direction in writing for that purpose *And also* that it shall be lawful for the said (*T.*) and the survivor of them his executors or administrators their or his assigns to continue all or any part of the same sums respectively on such securities or in such state of investment as the same shall be at the time of the death of the said (*S.*) and that they or any of them shall not be liable for or to answer or make good any loss to the trust funds which shall arise from or be the consequence of their or his so doing *And* it is hereby further agreed and declared That the interest and income now due and the interest and income which shall from time to time become due for or in respect of the said several sums of £ in the meantime and

Trustees not to
call in money
without set-
tlor's consent
during his life.

Income of sums
to be applied
as after men-
tioned until
invested.

until the same respectively shall be received and invested as aforesaid shall be held and applied Upon and for the same or the like trusts and purposes as are hereinafter expressed and declared of or concerning the dividends interest and income of the stocks funds and securities in or upon which the same sums respectively are hereinbefore directed to be invested And that the said (T.) and the survivor of them his executors and administrators their and his assigns shall stand and be possessed of all the several trust monies stocks funds and securities and dividends interest and income thereof Upon the trusts and for the intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say) Upon trust that they the said (T.) or the survivor of them his executors or administrators their or his assigns do and shall from time to time yearly and every year during the life of the said (S.) by with and out of the dividends interest and income of the said trust monies stocks funds and securities raise and levy the several and separate annuities or yearly sums of £ sterling each free from all deductions on any account whatsoever and do and shall yearly and every year during the joint natural lives of the said (S.) and of each respectively of them the said (*nephews and nieces*) pay one of the said annuities or yearly sums of £ by equal half-yearly payments on the day of and the day of in every year unto each of them the said the first half-yearly payment of the said annuities respectively to become due and be made on such of the days aforesaid as shall first or next happen after the day of the date of these presents And the said annuities or yearly sums of £ hereinbefore provided for and directed to be paid to the said (*three females*) respectively to be for their respective sole use and benefit separate and apart from and exclusive of their respective present or any future husband and so and in such manner that the same may not be under his control or subject or liable to his debts contracts forfeitures or engagements and so that they respectively may not deprive themselves of the benefit thereof in any mode of anticipation and that their respective receipts may from time to time notwithstanding their respective coverture be good and effectual discharges for so much and such part of the same annuities as shall therein or thereby respectively be acknowledged or expressed to have been received And in case any or either of them the said (*annuitants*) shall happen to die in

No. DCXXI.
Of Money.

Trust to raise separate annuity for each nephew and niece during settlor's life.

Annuities for females to be paid to separate use.

Annuity of any annuitant

No. DCXXI. the lifetime of the said (*S.*) then do and shall yearly and every
Of Money. year during the remainder of the life of the said (*S.*) pay apply
 dying in set- and dispose of the annuity or annuities to which he she or
 tlor's life to be they respectively so dying as aforesaid would if living have
 paid for sup- been entitled as aforesaid in for or towards the maintenance
 port of his or support or education or otherwise for the benefit of his her or
 her children. their respective child or children in such proportions and gene-
 rally and in all respects in such manner as the said (*T.*) or the
 survivor of them his executors or administrators their or his
 assigns shall think proper or fit and expedient *But* in case
 any or either of them the said (*A.*) shall happen to die in
 the lifetime of the said (*S.*) and without leaving lawful issue
 living at his her or their death or respective deaths then and in
 such case the annuity or annuities to which he she or they re-
 spectively so dying as aforesaid would if living have been
 entitled as aforesaid *And also* any additional annuity or yearly
 sum or sums to be from time to time taken under this present
 trust or provision shall during the remainder of the life of the
 said (*S.*) be held upon the same or the like trusts as are herein-
 before declared of the annuity or annuities of such survivor or
 survivors or other or others of them and be divided between
 or amongst them in equal shares as tenants in common *And*
 subject and without prejudice as aforesaid *Upon trust* that
 they the said trustees and the survivor of them his executors
 or administrators their or his assigns do and shall from time to
 time yearly and every year during the life of the said (*S.*) pay
 the surplus of the dividends interest and income of the said
 trust monies stocks funds and securities unto him the said (*S.*)
 or his assigns or otherwise permit and suffer him or them to
 receive and take the same for his and their own use and benefit
 and from and immediately after the decease of the said (*S.*)
 do and shall stand and be possessed of all the said trust
 monies stocks funds and securities and the dividends interest
 and income of the same *Upon the trusts following* (that is to say)
Upon trust for the said (*three males and three females*) in equal
 shares or proportions as tenants in common the shares of the
 said (*M.*) respectively to be paid assigned or transferred to them
 respectively or to their respective executors administrators or
 assigns as soon after the decease of the said (*S.*) as conveniently
 may be *But* as to the share of each respectively of them the
 said (*F.*) to hold the same during her respective natural life
 and to pay the dividends interest and income thereof to her

Provision in
 case of annui-
 tant dying
 without issue
 in settlor's
 lifetime.

Surplus income
 to settlor for
 life.

Remainder.

To males abso-
 lutely.

The interest of
 shares of fe-
 males to se-
 parate use.

respective sole use and benefit separate and apart from and exclusive of her respective present or any future husband and so and in such manner that the same may not be under his control or subject or liable to his debts contracts forfeitures or engagements and so that she may not deprive herself of the benefit thereof in any mode of anticipation And that her respective receipts may from time to time notwithstanding her respective coverture be good and effectual discharges for so much and such part and parts of the said dividends interest and income as shall therein or thereby respectively be acknowledged or expressed to have been received And on the respective death of each of them the said (F.) the respective one third part or share in which she is to have such life interest as aforesaid of and in the said trust monies stocks funds and securities shall be held *Upon trust* for and for the benefit of all and every or any one or more exclusively of the other or others of her respective child or children or of the issue born during her respective life of any such child or children or upon trust for and for the benefit of all and every or any one or more exclusively of the other or others of such child or children and all and every or any one or more exclusively of the other or others of the issue born as aforesaid of any such child or children in such manner or form and if more than one in such shares and proportions and with such limitations over or substitutions in favour of any one or more of the others of the said children and issue and to vest and be payable and paid transferred or assured at such age or ages day or days upon such contingencies and under and subject to such directions and regulations for maintenance education and advancement and such conditions and restrictions as she by any deed or deeds to be sealed and delivered by her in the presence of and to be attested by two or more credible witnesses or by her last will and testament in writing or any writing in the nature thereof or any codicil or codicils to be signed by her in the presence of and to be attested by the like number of credible witnesses shall as well when covert as sole and notwithstanding her respective present or any future coverture direct or appoint And in default of any such direction or appointment and as to such part and parts of her said respective share of the said trust monies stocks funds or securities of or concerning which no such direction or appointment as aforesaid shall be made *Upon trust* for and for the benefit of her respec-

No. DCXXI.
Of Money.

Remainder.

To children and issue of females according to appointment by her by deed or will.

In default of appointment.

To children

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Of Money.
—
of females
equally.

Limitation
over on failure
of children of
females.

Appointed
shares to be
brought into
hotchpot.

Power of main-
tenance.

tive child or children who as to a son or sons shall then have attained or shall live to attain the age of twenty-one years or as to a daughter or daughters shall then have attained the age of twenty-one years or been married or shall live to attain that age or be married to be divided between them if more than one in equal shares as tenants in common And in case there shall be only one such child then the whole of the same share of the said trust monies stocks funds and securities and the dividends interest and income thereof shall belong to and be In trust for that one child and for his or her executors administrators and assigns absolutely *And* in case any or either of them the said (*F.*) shall die without having had any child or in case the child if only one or all the children if more than one of any one or more of them the said (*F.*) shall die as to a son or sons under the age of twenty-one years and as to a daughter or daughters under that age and without having been married Then the share of each respectively of them the said (*F.*) so dying or of whose issue there shall be such failure as aforesaid and also any additional share or shares to be from time to time taken under this present limitation shall be held upon the same trusts and as to the survivors or survivor or other or others of them the said (*F.*) with the same limitations over as are hereinbefore expressed and declared of the original share or shares of the said (*M.*) and of the other or others of them the said (*F.*) and by way or in the nature of cross-remainders *Provided always* and it is hereby agreed and declared by and between the said parties to these presents that no child of any or either of them the said (*F.*) taking any part of the said trust monies stocks funds or securities under or by virtue of any such direction or appointment as aforesaid shall as against his her or their brother or sister brothers or sisters have or be entitled to any share of the unappointed parts of the share or shares thereof in which his her or their parent or parents is or are to have such life interest or interests as aforesaid without bringing his or her appointed part or share into hotchpot and accounting for the same accordingly unless such appointment shall contain an express direction to the contrary *Provided always* and it is hereby further agreed and declared by and between the said parties to these presents That (unless the contrary shall be directed by any such appointment as aforesaid) it shall and may be lawful to and for the said trustees and the survivor of them their and his executors administrators and assigns at any time or times after the decease of each any

or either of them the said (F.) to apply all or any part of the dividends interest and income of or arising from the portion or share of each any or either of her or their respective child or children of and in the said trust monies stocks funds and securities in for or towards his her or their maintenance education clothing and advancement or otherwise for his her or their respective benefit during his her or their respective minority in such manner as the said trustee or trustees shall think fit *And also* after the decease of each any or either of them the said (F.) or in her or their respective lifetime with her or their respective consent in writing to raise to and for each any or either of her or their respective child or children any part not exceeding one half of the then vested or expectant portion or share of the same child of and in the said trust monies stocks funds and securities and to apply the money so to be raised in for or towards his or her advancement or preferment in the world or in marriage or establishment in life or otherwise for his or her benefit in such manner as the said trustees or trustee for the time being shall think proper *And* that the money so to be advanced to and for each of the same children respectively shall be taken and considered as part of his or her said portion or share and shall be deducted and allowed out of the same accordingly notwithstanding his or her death before such portion or share shall become absolutely vested in him or her *And further* that so much of the dividends interest and annual income of or arising from the portion or share of each of the same children respectively as shall not be applied for his or her maintenance education clothing benefit or advancement shall from time to time be added to the principal of such portion or share and be improved at interest together with the same and as part thereof by way or in the nature of compound interest and follow and be subject to all the limitations trusts and dispositions hereinbefore expressed declared and contained of and concerning the principal of the same portion or share [*Trustees' receipts to be good discharges. Power for settlor during his life to appoint new trustees. Clauses for indemnity, &c. of trustees, and that trustees, who were solicitors, might make usual charges for business done in relation to the trust.*] *Provided always* and it is hereby lastly agreed and declared by and between the said parties to these presents that notwithstanding anything hereinbefore contained to the contrary it shall and may be lawful to and for the said (S.) at any time or times and

No. DCXXI.
Of Money.

Power of advancement.

Money advanced to be taken as part of share.

Surplus income to be accumulated.

Power to revoke trusts and to declare other trusts.

No. DCXXI. Of Money. from time to time during his life and he hereby reserves to himself full and absolute power by any deed or deeds to be sealed and delivered by him in the presence of and attested by two or more credible witnesses to revoke determine and make void alter or vary all or any of the trusts intents and purposes powers provisions and agreements hereinbefore declared and contained as to all or any part or parts of the said trust monies stocks funds and securities hereby settled or intended so to be and as to all or any part of the share or shares interest or interests of or in the said trust monies stocks funds or securities of any person or persons entitled or to be entitled to any share or shares of or interest or interests in the same respectively under or by virtue of these presents and by the same or any other deed or deeds to be sealed and delivered and attested as aforesaid to limit and appoint such new or other trusts powers provisions declarations and agreements of the trust monies stocks funds or securities the trusts powers provisions declarations and agreements of or relating to which shall be so revoked determined and made void altered or varied as aforesaid either in favour of him the said (S.) or of any other person or persons and generally and in all respects in such manner as he shall deem proper or expedient *In witness &c.*

In a Deed of Revocation in execution of the above Power it was provided.

Proviso in a deed exercising the power of revocation.

Provided always and it is hereby agreed and declared between and by the parties to these presents that nothing herein contained shall prejudice or affect the powers of revocation and new appointment reserved to the said (S.) by the said in part recited indentures respectively (except so far as such powers are hereby respectively exercised or intended so to be) and that nothing herein contained shall revoke determine make void alter vary prejudice or affect the trusts powers authorities or discretion by the said recited indentures respectively or either of them given to the said (T.) and the survivor of them his executors and administrators and their or his assigns of calling in and enforcing payment laying out and investing trust monies in or upon any government or real securities or in the purchase of lands or to alter vary and change the securities in or upon which trust monies shall from time to time be invested in pursuance of any power or authority for that purpose contained in the same indentures respectively *And* that the several powers and provisions in the said recited indentures respectively contained for the indemnity

and reimbursement of the trustees thereby nominated and appointed and the trustees to be appointed under or by virtue of the powers therein contained shall extend and apply to the trusts hereby declared as fully and effectually as if the same powers and provisoes had been herein repeated and that the said (T.) respectively shall be entitled to make all usual charges as attornies and solicitors for all business which shall be transacted by them or either of them in the execution of the trusts hereinbefore declared and hereby reposed in them respectively.

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Of Money.

SHIPPING.

- | | |
|---|---|
| 1. <i>The Description and Ownership of British Ships.</i> | 8. <i>Registry anew and Transfer of Registry.</i> |
| 2. <i>The Measurement of Tonnage.</i> | 9. <i>Registry, Miscellaneous.</i> |
| 3. <i>The Registry of Ships.</i> | 10. <i>Forgery and False Declarations.</i> |
| 4. <i>The Certificate of Registry.</i> | 11. <i>National Character.</i> |
| 5. <i>Transfers and Transmissions of Ships and Shares of Ships.</i> | 12. <i>Evidence.</i> |
| 6. <i>Mortgages.</i> | 13. <i>Certain Forms exempt from Stamps.</i> |
| 7. <i>Certificates of Mortgage and Sale.</i> | |

The Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, came into operation on the 1st May, 1855, and has introduced a variety of important alterations of the law relating to the ownership, measurement, and registry of British ships.

The second part of that Act, which includes the subjects above mentioned, and to which this article is confined, applies to the whole of her Majesty's dominions, 17 & 18 Vict. c. 104, s. 17.

1. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description; (that is to say,)

- (1.) Natural-born British subjects; provided that no natural-born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within her Majesty's dominions, or if not so resident, member of a British factory, or

Description and Ownership of British Ships.

*Description and
Ownership of
British Ships.*

partner in a house actually carrying on business in the United Kingdom or in some other place within her Majesty's dominions :

- (2.) Persons made denizens by letters of denization, or naturalized by or pursuant to any act of the imperial legislature, or by or pursuant to any act or ordinance of the proper legislative authority in any British possession ; provided that such persons are and continue to be during the whole period of their so being owners resident in some place within her Majesty's dominions, or if not so resident, members of a British factory, or partners in a house carrying actually on business in the United Kingdom or in some other place within her Majesty's dominions, and have taken the oath of allegiance to her Majesty subsequently to the period of their being so made denizens or naturalized :
- (3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession, *Ib.* s. 18.

British ships,
with certain
exceptions,
must be regis-
tered.

Every British ship must be registered in manner hereinafter mentioned, except—

- (1.) Ships duly registered before the Act came into operation :
- (2.) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident :
- (3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portion of the coasts of Canada, Nova Scotia, or New Brunswick as lie bordering on such gulf :

And no ship hereby required to be registered shall, unless registered, be recognized as a British ship ; and no officer of customs shall grant a clearance or transire to any ship hereby required to be registered for the purpose of enabling her to proceed to sea as a British ship, unless the master of such ship, upon being required so to do, produces to him such certificate of registry as is hereinafter mentioned ; and if such ship attempts to proceed to sea as a British ship without a clearance or transire such officer may detain such ship until such certificate is produced to him, *Ib.* s. 19.

*Measurement of
Tonnage.*

2. Precise and particular rules as to the mode in which the measurement is to be made are given in the Act, both for sailing vessels and steamers, *Ib.* ss. 20—28 ; see also 18 & 19 Vict. c. 91, s. 14.

Officers may be
appointed and
regulations

The Commissioners of Customs may, with the sanction of the Treasury, appoint such persons to superintend the survey and ad-

measurement of ships as they think fit; and may, with the approval of the Board of Trade, make such regulations for that purpose as may be necessary; and also, with the like approval, make such modifications and alterations as from time to time become necessary in the tonnage rules prescribed by the Act, in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of admeasurement therein adopted, 17 & 18 Vict. c. 104, s. 29.

Measurement of Tonnage.

made for measurement of ships.

3. The following persons are required to register British ships, and shall be deemed registrars, viz. :—

The Registry of British Ships.

- (1.) At any port or other place in the United Kingdom or Isle of Man, approved by the Commissioners of Customs for the registry of ships, the collector, comptroller, or other principal officer of customs for the time being :
- (2.) In the islands of Guernsey and Jersey, the principal officers of her Majesty's customs, together with the governor, lieutenant-governor, or other person administering the government of such islands respectively :
- (3.) In Malta, Gibraltar, and Heligoland, the governor, lieutenant-governor, or other person administering the government of such places respectively :
- (4.) At any port or place so approved as aforesaid within the limits of the charter but not under the government of the East India Company, and at which no custom house is established, the collector of duties, together with the governor, lieutenant-governor, or other person administering the government :
- (5.) At the ports of Calcutta, Madras, and Bombay, the master attendants, and at any other port or place so approved as aforesaid, within the limits of the charter and under the government of the East India Company, the collector of duties, or any other person of six years' standing in the civil service of the said Company, who is appointed by any of the governments of the said Company to act for this purpose :
- (6.) At every other port or place so approved as aforesaid within her Majesty's dominions abroad, the collector, comptroller, or other principal officer of customs or of navigation laws, or if there is no such officer resident at such port or place, the governor, lieutenant-governor, or other person administering the government of the possession in which such port or place is situate, *Ib.* s. 30.

The 108th section of this Act provides that nothing therein contained shall affect the statute 3 & 4 Vict. c. 56, an Act passed to regulate the trade of ships built and trading within the limits of the East India Company's charter. Those ships, therefore, are not within the scope of the above enactment as long as they are confined within

The Registry of British Ships. those limits. Dowdeswell's Merchant Shipping Acts, p. 259, n. (a). As to such ships, see *Cranford v. Spooner*, 6 Moore, P. C. 1.

Substitution of governor abroad for Commissioners of Customs and of consul for justice. The governor, lieutenant-governor, or other person administering the government in any British possession where any ship is registered under the authority of the Act shall, with regard to the performance of any act or thing relating to the registry of a ship or of any interest therein, be considered in all respects as occupying the place of the Commissioners of Customs; and any British consular officer shall, in any place where there is no justice of the peace, be authorized to take any declaration hereby required or permitted to be made in the presence of a justice of the peace, 17 & 18 Vict. c. 104, s. 31.

Registrar to keep register books. Every registrar shall keep a book, to be called "The Register Book," and enter therein the particulars hereinafter required to be registered, *Ib.* s. 32.

Port of registry of British ship. The port or place at which any British ship is registered for the time being shall be considered her port of registry or the port to which she belongs, *Ib.* s. 33.

Name of ship. The following rules shall be observed with respect to the names of British registered ships; (that is to say)

- (1.) Before registry the name of each ship and of the port to which she belongs shall be painted on a conspicuous part of her stern, on a dark ground, in white or yellow letters, of a length not less than four inches:
- (2.) No change shall be made in the name of any registered ship:
- (3.) No concealment, absence, or avoidable obliteration of the above names shall be permitted, except for the purpose of escaping capture by an enemy:
- (4.) The ship shall not be described by or with the knowledge of the owner or master by any name other than the one by which she is registered:

And for every breach of the above rules, or any of them, the owner and master shall each incur a penalty not exceeding 100*l.*, *Ib.* s. 34. The Commissioners may, with the consent of the Board of Trade, exempt any pleasure yacht from this provision regarding the name of every ship and the port to which she belongs to be painted on her stern, 18 & 19 Vict. c. 91, s. 13.

Application for registry, by whom to be made. Every application for the registry of a ship shall, in the case of individuals, be made by the person requiring to be registered as owner, or by some one or more of such persons, if more than one, or by his or their duly-authorized agent, and in the case of bodies corporate by their duly-authorized agent; the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointers, and if appointed by a body corporate, by

some instrument under the common seal of such body corporate, *The Registry of British Ships.*
17 & 18 Vict. c. 104, s. 35.

Before registry, the ship shall be surveyed by a person duly appointed under the Act; and such surveyor shall grant a certificate in the form marked A. in the schedule thereto, specifying her tonnage, build, and such other particulars descriptive of the identity of the ship as may from time to time be required by the Board of Trade; and such certificate shall be delivered to the registrar before registry, *Survey of ship.*
Ib. s. 36.

The following rules shall be observed with respect to entries in the register book; (that is to say,) *Rules as to entries in register book.*

- (1.) The property in a ship shall be divided into sixty-four shares:
- (2.) Subject to the provisions with respect to joint owners or owners by transmission hereinafter contained, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner:
- (3.) No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint owners of a ship, or of a share or shares therein:
- (4.) Joint owners shall be considered as constituting one person only as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in severalty of any interest in any ship or in any share or shares therein in respect of which they are registered:
- (5.) A body corporate may be registered as owner by its corporate name, *Ib.* s. 37.

No person shall be entitled to be registered as owner of a ship or any share therein until he has made and subscribed a declaration in the form marked B. in the schedule to the Act, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say,) *Declaration of ownership by individual owner.*

- (1.) A statement of his qualification to be an owner of a share in a British ship:
- (2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building not known,) a statement that she is foreign-built, and that he does not know the time and place of her building; and, in addition thereto, in the case of a foreign ship, a statement of

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British Ships.

her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned :

- (3.) A statement of the name of the master :
- (4.) A statement of the number of shares in such ship of which he is entitled to be registered as owner :
- (5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein :

The above declaration of ownership shall be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom-house of the port of registry, but if beyond that distance in the presence of any registrar or of any justice of the peace, *Ib.* s. 38.

Declaration of
ownership by
body corporate.

No body corporate shall be entitled to be registered as owner of a ship or of any share therein until the secretary or other duly-appointed public officer of such body corporate has made and subscribed in the presence of the registrar of the port of registry, a declaration in the form marked C. in the schedule to the Act referring to the ship as described in the certificate of the surveyor, and containing the following particulars ; (that is to say,)

- (1.) A statement of such circumstances of the constitution and business of such body corporate as prove it to be qualified to own a British ship :
- (2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building unknown), a statement that she is foreign-built, and that he does not know the time or place of her building ; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned :
- (3.) A statement of the name of the master :
- (4.) A statement of the number of shares in such ship of which such body corporate is owner :
- (5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein, *Ib.* s. 39.

Evidence to be
produced on
registry.

Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence ; (that is to say,)

- (1.) In the case of a British-built ship, a certificate (which the builder is hereby required to grant under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him, and of the time when and of

the place where such ship was built, together with the name of the party (if any) on whose account he has built the same, and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner :

- (2.) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly-appointed officer declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof :
- (3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship, *Ib.* s. 40.

If any builder wilfully makes a false statement in any certificate hereby required to be granted by him he shall for every such offence incur a penalty not exceeding 100*l.*, *Ib.* s. 41.

Penalty on builder for false certificate.

As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the register book the following particulars relating to such ship ; (that is to say,)

Particulars of entry in register book.

- (1.) The name of the ship and of the port to which she belongs :
- (2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor :
- (3.) The several particulars as to her origin stated in the declaration or declarations of ownership :
- (4.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship, *Ib.* s. 42.

No notice of any trust, express, implied, or constructive, shall be entered in the register book, or receivable by the registrar ; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose in manner hereinafter mentioned of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration, *Ib.* s. 43. See s. 69, *post*, p. 1457.

No notice taken of trusts.

The effect of this section will be to recognize the existence of unregistered interests in British ships, and registered ownership, in trust for partnership and persons not named in the register, thus making a registered owner responsible for breach of trust to a court of equity, but without prejudice as respects *boná fide* purchasers not implicated in the fraud or breach of trust, to any title derived by them from him, Abbott on Shipping, by Shee, p. 52, 10th ed. See s. 65, *post*, p. 1457.

The Certificate of Registry.

Certificate of registry to be granted.

4. Upon the completion of the registry of any ship the registrar shall grant a certificate of registry in the form marked D. in the schedule to the Act, comprising the following particulars; (that is to say,)

- (1.) The name of the ship and of the port to which she belongs :
- (2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor :
- (3.) The name of her master :
- (4.) The several particulars as to her origin stated in the declaration or declarations of ownership :
- (5.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are respectively interested, indorsed upon such certificate, 17 & 18 Vict. c. 104, s. 44.

Change of owners to be indorsed on certificate of registry.

Whenever any change takes place in the registered ownership of any ship, then, if such change occurs at a time when the ship is at her port of registry, the master shall forthwith deliver the certificate of registry to the registrar, and he shall indorse thereon a memorandum of such change; but if such change occurs during the absence of the ship from her port of registry, then upon her first return to such port the master shall deliver the certificate of registry, to the registrar, and he shall indorse thereon a like memorandum of the change; or if she previously arrives at any port where there is a British registrar, such registrar shall, upon being advised by the registrar of her port of registry of the change having taken place, indorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained; and any master who fails to deliver to the registrar the certificate of registry as hereinbefore required, shall incur a penalty not exceeding 100*l.*, *Ib.* s. 45.

Change of master to be indorsed on certificate of registry.

Every change of the master of any British registered ship must be indorsed on the certificate by the presiding officer of the naval court, or by the registrar, or if there is no registrar by the British consular officer resident at the port where such change takes place, and they must forthwith report the change of the master to the Commissioners of Customs in London; and the officers of customs at any port may refuse to admit any person to act at such port as master of any British ship, unless his name is inserted in or indorsed upon the certificate of registry of such ship as the last appointed master thereof, *Ib.* s. 46.

Power to grant new certificate.

The registrar may, with the sanction of the Commissioners of Customs, upon the delivery up to him of the former certificate of registry, grant a new certificate in the place of the one so delivered up, *Ib.* s. 47.

The Act provides for the granting of a new certificate of registry in the event of the certificate of registry of any ship being mislaid, lost, or destroyed, *Ib.* s. 48. The Certificate of Registry.

The provisional certificate granted under the last section, is to be delivered up to the registrar within ten days after the first subsequent arrival of the ship at her port, *Ib.* s. 49.

The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatsoever which any owner, mortgagee or other person may have or claim to have on or in the ship described in such certificate; and any person, whether interested or not in the ship, who refuses on request to deliver up such certificate when in his possession or under his control to the person for the time being entitled to the custody thereof for the purposes of such lawful navigation, or to any registrar, officer of the customs, or other person legally entitled to require such delivery, may be brought by warrant before any justice or any court capable of taking cognizance of such matter, to be examined touching such refusal; and will be liable to a penalty of 100*l.*, unless it is proved to the satisfaction of such justice or court that there was reasonable cause for such refusal, or that the certificate is lost, *Ib.* s. 50. Custody of certificate.
Delivery of certificate may be required.
Penalty for detention.

The mode of proceeding, if detaining party abscond, is provided for, *Ib.* s. 51.

The use by the master or owner of any ship of a certificate of registry not legally granted in respect of such ship is a misdemeanor, and subjects the ship to process of adjudication before the High Court of Admiralty, and to forfeiture, *Ib.* s. 52. Penalty for using improper certificate.

Notice of the loss, capture or breaking up of any ship, or of her ceasing to be British owned, must immediately after knowledge of the fact be given by the owner of her, or of any share in her, to the registrar, who will make an entry thereof in the register book, and the master of any ship so circumstanced shall immediately, if such event occurs in port or within ten days after arrival in port, deliver her certificate to the registrar of the ship's port, or to a registrar or British consular officer, to be forwarded to the registrar of the ship's port, under a penalty, on any owner or master making default in obeying the requirements of this section, of 100*l.*, *Ib.* s. 53. Certificate of ship lost, or ceasing to be British, to be delivered up.

If any ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident at such port may grant the master of such ship, upon his application, a provisional certificate, stating— Provisional certificate for ship becoming vested in British owners at foreign port.

The name of the ship :

The time and place of her purchase, and the names of her purchasers :

The name of her master :

The Certificate of Registry.

The best particulars as to her tonnage, build and description that he is able to obtain :

And he shall forward a copy of such certificate, at the first convenient opportunity, to the Commissioners of Customs in London. The certificate so granted shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar; but upon the expiration of such period, or upon arrival at such port, shall be void to all intents, *Ib. s. 54.*

Transfers and Transmissions.

Transfer of ships or shares therein.

5. A registered ship, or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale; and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such other description as may be sufficient to identify the ship to the satisfaction of the registrar, and shall be according to the form marked E. in the schedule to the Act, or as near thereto as circumstances permit, and shall be executed by the transferor in the presence of and be attested by one or more witnesses, *Ib. s. 55.*

The form of bill of sale issued by the Commissioners of Customs differs from form E., and is inserted *post*, p. 1468. A bill of sale of a ship does not require registration under the stat. 17 & 18 Vict. c. 36. See *ante*, p. 474, sect. 7.

Declaration to be made by transferree.

No individual shall be entitled to be registered as transferree of a ship or any share therein until he has made a declaration in the form marked F. in the schedule to the Act, stating his qualification to be registered as owner of a share in a British ship, and containing a denial similar to the denial before required (*ante*, p. 1450) to be contained in a declaration of ownership by an original owner; and no body corporate shall be entitled to be registered as transferree of a ship or any share therein until the secretary or other duly-appointed public officer of such body corporate has made a declaration in the form marked G. in the schedule to the Act, stating the name of such body corporate, and such circumstances of its constitution and business as may prove it to be qualified to own a British ship, and containing a denial similar to the denial before required (*ante*, p. 1450) to be contained in a declaration of ownership made on behalf of a body corporate. In the case of an individual, the above declaration shall be made, if he reside within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace; in the case of a body corporate the declaration shall be made in the presence of the registrar of the port of registry, 17 & 18 Vict. c. 104, s. 56.

Registration of transfer.

Every bill of sale for the transfer of any registered ship, or of any share therein when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration

before required to be made by a transferee; and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share comprised in such bill of sale, and shall indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale of any ship or shares in a ship shall be entered in the register book in the order of their production to the registrar, *Ib. s. 57.*

Transfers and Transmissions.

If the property in any ship or in any share therein becomes transmitted in consequence of the death or bankruptcy or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the provisions of the Act, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, in the form marked H. in the schedule to the Act, and containing the several statements before required to be contained in the declaration of a transferee, or as near thereto as circumstances permit, and, in addition, a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed if the declarant resides at or within five miles of the custom-house of the port of registry in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, *Ib. s. 58.*

Transmission of shares of any ship by death, bankruptcy, or marriage.

If such transmission has taken place by virtue of the bankruptcy or insolvency of any registered owner, the said declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female owner, the said declaration shall be accompanied by a copy of the register of such marriage or other legal evidence of the celebration thereof, and shall declare the identity of the said female owner; and if such transmission has taken place by virtue of any testamentary instrument or by intestacy, then in England, Wales, and Ireland the said declaration shall be accompanied by the probate of the will or the letters of administration or an official extract therefrom, and in Scotland or in any British possession by the will or any copy thereof that may be evidence by the laws of Scotland or of such possession, or by letters of administration or any copy thereof, or by such other document as may by the laws of Scotland or of such possession be receivable in the courts of judicature thereof as proof of the person entitled upon an intestacy, *Ib. s. 59.*

Proof of transmission by bankruptcy, marriage, will, or on intestacy.

The registrar, upon the receipt of such declaration so accompanied as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share therein in respect of which such transmission has taken place; and such persons, if more than one, shall, however

Registration of transmitted share.

Transfers and
Transmissions.

numerous, be considered as one person only as regards the rule before contained relating to the number of persons entitled to be registered as owners, *Ib.* s. 60.

The registrar is to retain certain evidence, the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership, *Ib.* s. 61.

Unqualified
owner entitled
by transmis-
sion may apply
to court for sale
of ship.

Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner or on the marriage of any female owner in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered in England or Ireland for the Court of Chancery, if in Scotland for the Court of Session, or if in any British possession for any court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the court may direct; and it shall be in the discretion of any such court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application it may think fit, and generally to act in the premises in such manner as the justice of the case requires, *Ib.* s. 62.

Order to be
made by court.

Every order for a sale made by such court shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share, *Ib.* s. 63.

The time for application is limited to one year, *Ib.* s. 64.

Power is given
to the courts to
prohibit
transfers.

It shall be lawful in England or Ireland for the Court of Chancery, in Scotland for the Court of Session, in any British possession for any court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such court may possess, upon the summary application of any interested person, made either by petition or otherwise, and either *ex parte* or upon service of notice on any other person, as the court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share; and it shall be in the discretion of such court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted with or without costs, and generally to act in the premises in such manner as the justice of the case requires; and every

registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same, *Ib.* s. 65. *Transfers and Transmissions.*

This section does not deprive the court of its ordinary jurisdiction to protect property during litigation, *Orr v. Dickinson*, 1 Johns. 1.

Shares in ships registered under the Act are included in the word "stock," as defined by the Trustee Act, 1850, and the provisions of the latter Act are applicable to such shares accordingly, 18 & 19 Vict. c. 91, s. 10. Shares in ships within Trustee Act, 1850.

6. A registered ship or any share therein may be made a security for a loan or other valuable consideration; and the instrument creating such security, hereinafter termed a "mortgage," shall be in the form marked I. in the schedule to the Act, or as near thereto as circumstances permit; and on the production of such instrument the registrar of the port at which the ship is registered shall record the same in the register book, 17 & 18 Vict. c. 104, s. 66. *Mortgages.*
Mortgage ships and shares therein.

The forms issued by the Commissioners of Customs differ from the form in the schedule, and are inserted, *post*, pp. 1470, 1471.

In any case in which any bill of sale, mortgage or other instrument, for the disposal or transfer of any ship or any share or shares therein, or of any interest therein, is made in any form, or contains any particulars other than the form and particulars prescribed and approved for the purpose, by or in pursuance of the Merchant Shipping Act, 1854, no registrar shall be required to record the same without the express direction of the Commissioners of Customs, 18 & 19 Vict. c. 91, s. 11.

Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record, 17 & 18 Vict. c. 104, s. 67. Mortgages to be registered in order of time of production.

Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made, the estate, if any, which passed to the mortgagee, shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made, *Ib.* s. 68. Entry of discharge of mortgage.

If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other, according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself, *Ib.* s. 69. Priority of mortgages.

Mortgages.

Mortgagee not to be deemed owner.

A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt, *Ib.* s. 70.

It seems that the mortgagee of a ship has power under this section to use as well as sell the ship. Where a mortgagee claimed under a special contract, which did not contemplate a sale by him until two months had elapsed after a demand for payment, it was held, upon the construction of the agreement, and especially having regard to the circumstance that the ship would otherwise remain useless in that interval, that he was at liberty to use the ship. In such a case, the circumstance of the mortgagee being registered as absolute owner, is not conclusive as to the rights of the parties, *European &c. Co. v. Royal Mail &c. Co.*, 4 Kay & J. 676; see *Dickinson v. Küchen*, 8 Ell. & Bl. 789.

Mortgagee to have power of sale.

Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee, 17 & 18 Vict. c. 104, s. 71.

Rights of mortgagee not affected by any act of bankruptcy of mortgagor.

No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt, *Ib.* s. 72.

Transfer of mortgages.

A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the schedule to the Act (see *post*, 1470), and on the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record, *Ib.* s. 73.

Transmission of the interest of a mortgagee by death, bankruptcy or marriage.

If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of the death, bankruptcy or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of the act such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted,

made in the form marked L. in the schedule hereto to the Act, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is required by the sect. 59, to authenticate a corresponding transmission of property from one registered owner to another, *Ib.* s. 74; see *ante*, p. 1455.

Mortgages.

The registrar, upon the receipt of such declaration and the production of the evidence, shall enter the name of the person or persons entitled under such transmission in the register book as mortgagee or mortgagees of the ship or share in respect of which such transmission has taken place, *Ib.* s. 75.

Entry of transmitted mortgage.

7. Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell, *Ib.* s. 76.

The Certificates of Mortgage and Sale.

Powers of mortgage and sale may be conferred by certificate.

Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register book, the following particulars; (that is to say,)

Requisites for certificates of mortgage and sale.

- (1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum:
- (2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained:
- (3.) The limit of time within which such power may be exercised,

Ib. s. 77.

No certificate of mortgage or sale shall be granted so as to authorize any mortgage or sale to be made—

Restrictions on certificates of mortgage and sale.

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same British possession if the port of registry is situate within a British possession; or

By any person not named in the certificate, *Ib.* s. 78.

Certificates of mortgage and sale shall be in the forms marked

Forms of certificates.

*The Certificates
of Mortgage
and Sale.*

ificates of mort-
gage and sale.

Rules as to
certificates of
mortgage.

respectively M. and N. in the schedule to the Act, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage or sale affecting the ships or shares in respect of which such certificates are given, *Ib.* s. 79.

The following rules shall be observed as to certificates of mortgage ; (that is to say,)

- (1.) The power shall be exercised in conformity with the directions contained in the certificate :
- (2.) A record of every mortgage made thereunder shall be endorsed thereon by a registrar or British consular officer :
- (3.) No mortgage *bonâ fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage :
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
- (5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book ; and if there be more mortgages than one so indorsed the respective mortgagees claiming thereunder shall, notwithstanding any express implied or constructive notice, be entitled one before the other according to the date at which a record of each instrument is endorsed on the certificate, and not according to the date of the instrument creating the mortgage :
- (6.) Subject to the foregoing rules every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate :
- (7.) The discharge of any mortgage so registered on the certificate may be indorsed thereon by any registrar or British consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book ; and upon such indorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made :

- (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted, he shall, after recording in the register book in such manner as to preserve its priority any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book; and every certificate so cancelled shall be void to all intents, *Ib. s. 80.*

*The Certificates
of Mortgage
and Sale.*

The following rules shall be observed as to certificates of sale; (that is to say,)

Rules as to
certificates of
sale.

- (1.) No such certificate shall be granted except for the sale of an entire ship :
- (2.) The power shall be exercised in conformity with the directions contained in the certificate :
- (3.) No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale :
- (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
- (5.) Any transfer made to a person qualified to be the owner of British ships shall be by bill of sale in the form before mentioned (*ante*, p. 1454), or as near thereto as circumstances permit :
- (6.) If the ship is sold to a party qualified to hold British ships, the ship shall be registered anew ; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book :
- (7.) Previously to such registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship :
- (8.) Such last-mentioned registrar shall retain the certificates of sale and registry, and after having indorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship, and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
- (9.) On such registry anew the description of the ship contained in

*The Certificates
of Mortgage
and Sale.*

her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee:

- (10.) If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and, having indorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein:
- (11.) If upon a sale being made to an unqualified person default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by British law as having acquired no title to or interest in the ship; and further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding 100*l*.
- (12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted; and such registrar shall thereupon cancel it, and enter the fact of such cancellation in the register book; and every certificate so cancelled shall be void to all intents,
Ib. s. 81.

The Commissioners of Customs, in case of loss of certificate of mortgage or sale, may either issue a new certificate or may direct such entries to be made in the register book, or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place, *Ib.* s. 82.

The revocation of certificates of mortgage and sale may be made under the authority of the registered owner, and through the intervention of the registrar, *Ib.* s. 83.

*Registry anew
and Transfer of
Registry.*

Alteration in
ship to be re-
gistered.

8. Whenever any registered ship is so altered as not to correspond with the description in the register book, the registrar of the port at which the alteration is made, but, if made elsewhere, the registrar of the first port having a registrar at which the ship arrives after her alteration, shall, on application to him, on the receipt of a certificate from the proper surveyor specifying the nature of such alteration,

either retain the old certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or indorse and subscribe on the existing certificate a memorandum of such alteration; and the registrar to whom such application is made, if he is the registrar of the port of registry of the ship, shall enter in his register book the particulars of the alteration so made, and the fact of such new certificate having been granted or indorsement having been made on the existing certificate; but if he is not such last-mentioned registrar, he shall forthwith report such particulars and facts, accompanied by the old certificate of registry in cases where a new one has been granted, to the registrar of the port of registry of the ship, who shall retain such old certificate (if any), and enter such particulars and facts in his register book accordingly, *Ib.* s. 84.

Registry anew and Transfer of Registry.

When the registrar, to whom application is made in respect of any such alteration, is the registrar of the port of registry, he may, if he thinks fit, instead of registering such alteration, require such ship to be registered anew in manner before directed on the first registry of a ship, and if he is not such registrar as lastly before mentioned he may nevertheless require such ship to be registered anew, but he shall in such last-mentioned case grant a provisional certificate or make a provisional indorsement of the alteration made in manner before directed in cases where no registry anew is required, taking care to add to such certificate or indorsement a statement that the same is made provisionally, and to insert in his report to the registrar of the port of registry of the ship a like statement, *Ib.* s. 85.

On alteration registry anew may be required.

Every such provisional certificate, or certificate provisionally indorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or, if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon cause such ship to be registered anew in the same manner in all respects as before required on the first registry of any ship, *Ib.* s. 86.

Grant of provisional certificate in respect of alteration.

On failure of such registry anew of any ship or registry of alteration of any ship so altered as aforesaid, such ship shall be deemed not duly registered, and shall no longer be recognized as a British ship, *Ib.* s. 87.

Consequence of omission to register anew.

If upon any change of ownership in any ship the owner or owners desire to have such ship registered anew, although such registry anew is not required by the Act, it shall be lawful for the registrar of the port at which such ship is already registered, on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or such of them as the registrar thinks material, being duly complied with, to make such registry anew, and grant a certificate thereof, *Ib.* s. 88.

On change of owners, registry anew may be granted, if required.

*Registry anew
and Transfer of
Registry.*

Registry may
be transferred
from port to
port.

Manner of
transfer of re-
gistry.

The registry of any ship may be transferred from one port to another upon the application of all parties appearing on the register to be interested in such ship, whether as owners or mortgagees, such application to be expressed by a declaration in writing made and subscribed, if the party so required to make and subscribe the same resides at or within five miles of the custom-house of the port from which such ship is to be transferred, in the presence of the registrar of such port, but if beyond that distance in the presence of any registrar or of any justice of the peace, *Ib. s. 89.*

Upon such application being made as is before mentioned, and upon the delivery to him of the certificate of registry, the registrar of the port at which such ship is already registered shall transmit to the registrar of the port at which such ship is intended to be registered, notice of such application having been made to him, with a true copy of all particulars relating to such ship, and the names of all the parties appearing by his book to be interested as owners or mortgagees in such ship; and such last mentioned registrar shall, upon the receipt of such notice, enter all such particulars and names in his book of registry, and grant a fresh certificate of registry, and thenceforth such ship shall be considered as registered at and belonging to such last-mentioned port, and the name of such last-mentioned port shall be substituted on the stern of such ship in lieu of the name of the port previously appearing thereon, *Ib. s. 90.*

Upon the transfer of the registry of a ship from one port to another, the certificate of registry required by the last section may be delivered up to the registrar of either of such ports, 18 & 19 Vict. c. 91, s. 12.

Transfer of
registry not to
affect rights of
owners.

The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested either as owners or mortgagees in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected, 17 & 18 Vict. c. 104, s. 91.

*Registry,
Miscellaneous.*
Inspection of
register
books.

9. Every person may, upon payment of a fee to be fixed by the Commissioners of Customs not exceeding one shilling, have access to the register book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar, *Ib. s. 92.*

Indemnity to
registrar.

No registrar shall be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act, *Ib. s. 93.*

A return is to be made by registrars to Commissioners of Customs, of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to them in their character of registrars, and the names of the persons who have been concerned in the same, and such other particulars as may be directed by the said commissioners, *Ib. s. 94.*

The Commissioners of Customs are to cause the several forms required or authorized to be used by the second part of the Act, and contained in the schedule thereto, to be supplied to all registrars within her Majesty's dominions for distribution to the several persons requiring to use the same, either free of charge, or at such moderate prices as they may from time to time direct, and the said commissioners, with the consent of the Board of Trade, may alter the forms and issue instructions, *Ib.* s. 96.

Power is given to registrar to dispense with declarations and other evidence, *Ib.* s. 97.

Power is given to commissioners or governor in special cases to grant a pass to a ship not registered, *Ib.* s. 98.

If any person interested in any ship or any share therein is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing any thing required or permitted by the Act to be made or done by such incapable person in respect of registry, then the guardian or committee, if any, of such incapable person, or, if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person; and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted, *Ib.* s. 99.

*Registry,
Miscellaneous.*

Provision for cases of infancy or other incapacity.

Whenever any person is beneficially interested, otherwise than by way of mortgage, in any ship or share therein registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by the or by any other Act on owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such pecuniary penalties against both or either of the aforesaid parties with or without joining the other of them, *Ib.* s. 100.

Liabilities of owners.

10. Forging or fraudulently altering any register book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or indorsement required by the second part of the Act is felony, *Ib.* s. 101.

*Forgery and
False
Declarations.
Punishment
for forgery.*

Any person who, in any declaration made in the presence of or produced to any registrar of shipping, in pursuance of the second part of the Merchant Shipping Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes, or assists in making, or procures to be made, any false statement concerning the title to, or the ownership of, or the interest existing in, any ship,

Making false declarations a misdemeanor.

*Forgery and
False
Declarations.*

*National
Character.*
National character of ship to be declared before clearance.

or any share or shares in any ship, or who utters, produces, or makes use of any declaration or document containing any such false statement, knowing the same to be false, is guilty of a misdemeanor, 18 & 19 Vict. c. 91, s. 9.

11. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or transire; and if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made, 17 & 18 Vict. c. 104, s. 102.

Penalties are imposed for unduly assuming a British character; for concealment of British or assumption of foreign character; for acquiring ownership, except transmitted interests, if unqualified; making false declaration of ownership is a misdemeanor and subjects the declarant's interest in the ship to forfeiture, *Ib.* s. 103.

An officer is not liable for any seizure made on reasonable grounds, *Ib.* s. 104.

A penalty not exceeding 500*l.* is imposed for carrying improper colours, *Ib.* s. 105.

Effect of declaration in the Act that a ship shall not be recognized as a British ship.

Whenever it is declared by the Act that a ship belonging to any person or body corporate qualified according to the Act to be owners of British ships, shall not be recognized as a British ship, such ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognized British ship, *Ib.* s. 106.

Evidence.

Copies of registers and declarations to be admissible in evidence, and to be *primâ facie* proof of certain things.

12. Every register or declaration made in pursuance of the second part of the Act in respect of any British ship, may be proved in any court of justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar or other person having the charge of the original; which certified copies he is required to furnish to any person applying at a reasonable time for the same, upon payment of one shilling for each such certified copy; and every such register or copy of a register, and also every certificate of registry of any British ship, purporting to be signed by the registrar or other proper officer, shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *primâ facie* proof of all

the matters contained or recited in such register when the register or copy is produced, and of all the matters contained in or indorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced, *Ib.* s. 107.

Evidence.

The copy or transcript of the register of any British ship, which is kept by the chief registrar of shipping at the custom-house in London, or by the Registrar-General of Seamen, under the direction of the Commissioners of Customs, or of the Board of Trade, shall have the same effect to all intents and purposes as the original register, of which the same is a copy or transcript, 18 & 19 Vict. c. 91, s. 15.

General register books in London.

13. All instruments used in carrying into effect the second part of the Act, if not already exempted from stamp duty, and all instruments which by the third, fourth, sixth or seventh parts of the Act, are required to be made in forms sanctioned by the Board of Trade, if made in such forms, and all instruments used by or under the direction of the Board of Trade, in carrying such parts of the Act into effect, shall be exempt from stamp duty, 17 & 18 Vict. c. 104, s. 9.

Stamps.

Certain forms and instruments to be exempt from stamp duty.

Bill of Sale. (See 17 & 18 Vict. c. 104, s. 55, *ante*, p. 1454.)

STEAMER.

OFFICIAL NUMBER OF SHIP			NAME OF SHIP		
Port Number.....	Port of Registry.....	British or Foreign built	How propelled.....	Where built.....	When built.....
Number of Decks	Build .. ..	.. ..	Measure- ments. { Length from the fore part of the Stem under the Bowsprit to the aft side of the head of the Stern-post Main breadth to outside of plank Depth in hold from Tonnage Deck to Ceiling at Midships Feet Tenth.	Feet	Tenth.
Number of Masts	Galleries .. ..	.. ..		Feet	Tenth.
Rigged	Head .. ..	.. ..		Feet	Tenth.
Stern	Framework .. ..	.. ..		Feet	Tenth.
TONNAGE. Tonnage under Deck Closed-in spaces above the Tonnage Deck (if any) viz.: Space or spaces between Decks Poop Round-house Other inclosed spaces (if any) naming them			No. of Tons.		Tons.
Deduct Allowance for propelling Power			Deduction for space required for propelling Power .. ..		.. ..
Register Tonnage			Length of Engine Room (if measured)		Feet Tenth.
			Number of Engines .. ..		.. ..
			Combined Power (estimated Horse Power) .. ..		.. ..
<p>We (a) A. B. of &c. and C. D. of &c. in consideration of the sum of £ of lawful money of Great Britain paid to us (b) by E. F. and G. H. of &c. the Receipt whereof is hereby acknowledged transfer Shares in the Ship above particularly described and in her boats guns ammunition small arms and appurtenances to the said E. F. and G. H.</p> <p>Further we (a) the said A. B. and C. D. for ourselves and our (c) heirs covenant with the said E. F. and G. H. and their (d) assigns that we (a) have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred and that the same are free from incumbrance; (e).</p> <p>In witness whereof we have heretofore subscribed our names and affixed our seals this day of one thousand eight hundred and</p> <p>Executed by the above-named in the presence of</p>					

(a) Or "I."

(b) Or "me."

(c) Or "myself and my."

(d) "His" or "her."

(e) If there be any subsisting Mortgage or outstanding Certificate of Mortgage, add "save as of the said Ship."

No. DCXXIV.
Mortgage (to secure Principal Sum and Interest). (See 17 & 18 Vict. c. 104, s. 66, ante, p. 1457.)
 SAILING SHIP.

OFFICIAL NUMBER OF SHIP			NAME OF SHIP	
Port Number.....	Port of Registry.....	British or Foreign built.....	Where built.....	When built.....
MEASUREMENTS.		Feet.	Tenths.	
Build ..	Length from the fore part of Stem } under the Bowsprit to the aft side }			
Galleries ..	of the head of the stern-post .. }			
Head ..	Main breadth to outside plank .. }			
Framework ..	Depth in hold from Tonnage Deck to } Ceiling at Midships .. }			
Number of Decks ..				
Number of Masts ..				
Rigged ..				
Stern ..				
			TONNAGE.	No. of Tons.
			Tonnage under Tonnage Deck ..	..
			Closed-in spaces above the Tonnage Deck } (if any) viz.: .. }	..
			Space or spaces between Decks ..	..
			Poop ..	..
			Round-house ..	..
			Other inclosed spaces (if any) naming them ..	..
			Total Register Tonnage	
<p>(a) the undersigned in consideration of this day lent to (b) by do hereby for (c) and (d) heirs covenant with the said firstly: That (a) heirs executors or administrators will pay to the said the said sum of together with interest thereon at the rate of per cent. per annum on the day of next And secondly that if the said principal sum is not paid on the said day (a) or (d) heirs executors or administrators will during such time as the same or any part thereof remain unpaid pay to the said interest on the whole or such part thereof as may for the time being remain unpaid at the rate of per cent. per annum by equal half-yearly payments on the day of and day of in every year And for better securing to the said the repayment in manner aforesaid of the said principal sum and interest (a) hereby mortgage to the said shares of which (e) the owner in the ship above particularly described and in her boats guns ammunition small arms and appurtenances (a) declare that this mortgage is made on condition that the power of sale which by the Merchant Shipping Act 1854 is vested in the said shall not be exercised until the said (f) day of Lastly (a) for (c) and (d) heirs covenant with the said and assigns that (a) ha power to mortgage in manner aforesaid the above-mentioned shares and that the same are free from incumbrances (g) and seal this day of one thousand eight hundred and in the presence of</p>				
<p>(a) the within-mentioned in consideration of this day paid to (b) by hereby transfer to (i) the benefit of the within written security In witness whereof (a) ha hereto subscribed (d) name and affixed (d) seal this day of one thousand eight hundred and Executed by the above-named in the presence of</p>				
<p>N.B.—In case a mortgage is paid off the following Memorandum of its Discharge may be used:—</p> <p>Received the sum of in discharge of the within written security Dated at this day of 18 . Witness of</p>				

Transfer of Mortgage (h).

(f) Insert the day fixed for payment of principal as above. (g) If any prior incumbrance add, "save as appears by the Registry of the said Ship."

(a) "I" or "we," (b) "Me" or "us," (c) "Myself" or "ourselves," (d) "I am" or "we are," (e) "I am" or "we are," (f) "I am" or "we are," (g) "I am" or "we are," (h) "I am" or "we are," (i) "I am" or "we are,"

SAILING SHIP.

OFFICIAL NUMBER OF SHIP		NAME OF SHIP	
Port Number.....	Port of Registry.....	Where built	When built.....
Build ..	MEASUREMENTS. Length from the fore part of Stem } under the Bowsprit to the aft side } of the head of the stern-post .. } Main breadth to outside plank .. } Depth in hold from Tonnage Deck to } Ceiling at Midships } Stern ..	Feet.	Tonnage. Tonnage under Tonnage Deck Closed-in spaces above the Tonnage Deck (if any) viz: } Space or spaces between Decks .. } Poop } Round-house } Other inclosed spaces (if any) naming them } Total Register Tonnage
Galleries ..			
Head ..			
Framework ..			
Number of Decks ..			
Number of Masts ..			
Rigged ..			
Stern ..	Tenth.	No. of Tons.	

Whereas (a) the undersigned in consideration of the premises for (c) and (d) heirs covenant with the said and (e) assigns to pay to him or them the sums for the time being due on this security whether by way of principal or interest at the times and manner aforesaid And for the purpose of better securing to the said the payment of such sums as last aforesaid (b) do hereby mortgage to the said shares of which (f) the owner in the Ship above particularly described and in her boats guns ammunition small arms and appurtenances Lastly (b) for (c) and (d) heirs covenant with the said and (c) assigns that (b) ha power to mortgage in manner aforesaid the above-mentioned shares and that the same are free from incumbrances (g) assigns in witness whereof (b) ha hereto subscribed (d) name and attixed (d) seal this day of one thousand eight hundred and Executed by the above-named in the presence of

(a) Here state by way of recital that there is an account current between the mortgagor (describing him) and the mortgagee (describing him): and describe the nature of the transaction, so as to show how the amount of principal and interest due at any given time is to be ascertained, and the manner and time of payment. The following form of recital is suggested by the editor:—"Whereas I A. B. of &c. merchant have opened an account with C. D. and E. F. bankers and copartners carrying on the business of bankers at the county of and I the said A. B. have agreed with them that I the said A. B. will within the space of three calendar months next after notice in writing shall have been given to me or left at my usual or then last known place of abode or business by or on behalf of the said C. D. and E. F. or the persons or person for the time being carrying on the said banking business at aforesaid to pay to them or some of them at the said bank the balance which on my account current with them or any of them shall be due and owing from me to them or any of them for their bills and notes discounted and paid and for other loans credits or advances made to or for my accommodation or at my request by them or any of them and interest commission or other lawful charges together with interest on such balance from the day such notice as aforesaid shall have been given or left until the actual payment thereof at the rate of £ per centum per annum without any deduction whatsoever."

(b) "I" or "we."

(c) "Myself" or "ourselves."

(d) "My" or "our."

(e) "Him" or "their."

(f) "His" or "their."

(g) "I am" or "we are."

For the Form of Transfer see ante, p. 1470.

No. DCXXVI.

No. DCXXVI.

Freight.*Agreement for Freight (a) between the Master of a Ship and a Merchant.*Master agrees
to take in
goods.

Articles of Agreement &c. Between (*master*) of &c. master of the good ship or vessel called the of the one part and (*merchant*) of &c. of the other part *Witness* that the said (*master*) for the considerations hereinafter mentioned *Doth* hereby for himself his executors administrators and assigns covenant and agree with the said (*merchant*) his executors administrators and assigns that the said ship shall with all convenient expedition be made ready in all respects for her intended voyage from to and shall receive and take on board her for the said

And to sail, &c.

(*merchant*) such goods wares and merchandize as the said (*merchant*) his factors or assigns shall think fit at and after the rate of £ per ton and within days after the date hereof *And* shall and will set sail and depart from outwards and wind and weather serving shall sail to and within days after her arrival there shall unlade and deliver the same unto the factors or assigns of the said (*merchant*) (the dangers of the sea &c. always excepted) *And* he the said (*master*) shall and will pay all the tonnage duty payable in respect thereof *And also* shall and will well and truly keep observe and perform

To execute
charter-party.

all lawful port regulations at or elsewhere *And also* that he the said (*master*) shall and will within the space of days from the date hereof execute in due form of law a charter-party to the said (*merchant*) for performing the said voyage according to the true intent and meaning of these presents *And* the said (*merchant*) in consideration of the premises *Doth* hereby for himself his executors administrators and assigns covenant promise and agree with and to the said (*master*) his executors administrators and assigns that he the said (*merchant*) his executors administrators factors or assigns shall and will lade or tender the said goods to be laden on board the said ship and will pay or cause to be paid to the said (*master*) his executors administrators or assigns for freight thereof at or after the rate of

Merchant
agrees to lade.

£ per ton immediately after a right discharge and delivery thereof together with primage and average as is accustomed *In witness* &c.

(a) The word *freight* is sometimes used synonymously with *cargo*, *Lewis v. Marshall*, 8 Scott, N. R. 493, 729.

Agreement for Building a Ship, see No. LIV., *ante*, p. 84.

No. DCXXVII.

An Agreement with a Ship Builder, for Building or Repairing a Merchant Ship or Vessel.

No.
DCXXVII.

*Agreement for
building Ship.*

This Indenture made &c. Between (shipbuilder) of &c. shipbuilder of the one part and (merchant) of &c. merchant of the other part Whereas (a) the said (B.) hath proposed and agreed to build for the said (M.) the hull or body of a ship or vessel of the dimensions hereinafter mentioned and to complete the same in a workmanlike manner on or before the day of now next ensuing for the price or sum of £ Now this Indenture witnesseth That in pursuance of the said agreement he the said (B.) *Doth* hereby for himself his heirs executors and administrators covenant and agree with the said (M.) his executors administrators and assigns that he the said (B.) shall and will construct build and complete for him the said (M.) his executors administrators or assigns the hull of a ship or vessel of the descriptions and dimensions and in the manner particularly mentioned and set forth in the schedule inventory or specification hereunder written or hereunto annexed and when so constructed and finished the same shall on or before the said day of be launched at or in the harbour of and from thence be brought and safely moored at *And this Indenture further witnesseth* That in consideration of the covenants and agreements hereinbefore contained by and on the part of the said (B.) he the said (M.) *Doth* hereby for himself his heirs executors and administrators covenant and agree with the said (B.) his executors administrators and assigns that he the said (M.) his executors or administrators shall and will pay or cause to be paid unto the said (B.) his executors administrators or assigns the sum of £ of lawful

Builder agrees
to build.

Merchant covenants to pay
the sum agreed
on.

(a) If the agreement be for the repair only of a ship, recite, "*Whereas* the ship or vessel called the belonging to the said (merchant) has been much damaged and is greatly out of repair and condition *And* the said (builder) has agreed completely to repair the same within calendar months for the sum of £ *Now &c. (as above.)* Repairs.

No.
DCXXVII.
*Agreement for
building Ship.*

And will make
customary
allowances to
workmen.

Ship to be a
security
against claims
upon the mer-
chant.

Builder will
assign ship to
merchant on its
being com-
pleted and
moored in.

Further sum to
be paid if
awarded.

money of Great Britain at the time and in the manner following (that is to say) The sum of £ part thereof upon laying the harpins of the said vessel the further sum of £ other part thereof upon laying the deck and the further sum of £ being the residue and in full of the said sum of £ upon the said vessel being safely moored at or in the harbour of aforesaid And the said (*M.*) *Doth* also hereby agree to provide for the carpenters employed in the building of the said hull during such time as they shall be so employed such allowances of bread cheese and ale as are usual in such cases *Provided always* and it is also hereby further agreed by and between the said parties hereto and particularly by the said (*B.*) that the hull of the said vessel so to be built as aforesaid shall from time to time during the building thereof and afterwards until the same shall be so moored in safety as aforesaid (and be assigned to the said (*M.*) his executors or administrators as hereinafter is mentioned) stand chargeable and charged with and be a security to him and them for such sum and sums of money as he or they shall in the meantime have advanced or paid to the said (*B.*) his executors administrators or assigns under or in pursuance of these presents to the intent that the said (*M.*) his executors administrators and assigns shall and may thereby be protected from or indemnified against being liable or subject to the debts contracts or engagements or otherwise affected by any act of the said (*B.*) his executors or administrators And the said (*B.*) *Doth* hereby lastly agree and declare that he the said (*B.*) his executors or administrators shall and will immediately after the said hull shall be so moored in safety in the harbour of as aforesaid upon request and at the costs and charges of the said (*M.*) his executors or administrators assign the same free from all incumbrances by him or them made or occasioned unto him the said (*M.*) his executors administrators or assigns in such manner as is usual or may be proper in like cases *Provided always* and it is hereby further declared and agreed by and between the parties hereto that in case the said (*B.*) his executors or administrators shall think himself or themselves entitled to and shall claim any further or other sum or sums beyond or in addition to the said sum of £ so agreed to be paid for building the said ship as aforesaid, in order to complete the price of the said hull the same shall within days from the time of mooring the said vessel in harbour as aforesaid be referred to the judgment and decision of of &c.

and in case of his decease or he shall refuse to undertake such determination then to two indifferent persons the one to be nominated by the said (*B.*) his executors or administrators and the other by the said (*M.*) his executors or administrators who or a referee to be by them named as umpire shall within fifteen days from the time aforesaid make or give his or their award or decision thereon *And* the said (*M.*) his executors or administrators shall and will within the space of days next thereafter pay to the said (*B.*) his executors administrators or assigns such sum or sums of money as shall be so awarded or adjudged *And* [*a general clause of reference may be added for the determination of differences, and a penal clause may also be inserted here for non-performance*] *In witness &c.*

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*Agreement for
building Ship.*

Schedule or Specification above referred to.

The hull of the said ship or vessel referred to in the above agreement shall be in length within the posts feet the rake afore feet the rake abaft suitable the harpins to be at feet forward and aft The hull at the dead flat to be in breadth feet the berth thereof from the top of the ceiling to the top of the covering board the square of the floor to be inches on the keel and inches at the sirmark the timbers to be inches square at the binds and inches at the top timber heads the transom to be feet long the post feet broad the plank from the keel to the binds to be inches thick except five strokes on each side or three on the bilge and two under the binds which are to be inch plank the hull to have three binds each ten inches deep and seven inches thick one stroke immediately above the binds to be inch plank all the rest to the channel bind inch plank and above the channel bind to be inch plank to have hold beams inches square with forward all whole transoms aft and one hood to be teiled with inch plank from the keel to the underside of the hold beams except three strokes on the bilge on each side which are to be inch plank all the ceilings from the hold beams to the upper deck beams to be inch plank except one long plank under the main deck beam which is to be inch thick to be ceiled fore and aft with inch plank and above the binds forward with inch plank to have one four-inch plank to be bolted to fore beam and transom knees to be bolted through the side into the beams the main deck to be laid with Norway

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DCXXVII.
*Agreement for
building Ship.*

deals inches thick to abaft the main mast and from thence
to be inch plank to have a sufficient number of main deck
beams to have feet inches waste and two drifts fore
and aft feet deep the quarter deck and forecastle deck to
be laid with Norway deals inches thick the floors to
be feet long with inches rise the binds to have
two foot and a half hang the covering boards in the midships to
be two inch and a half plank to have windlass capstan cat-
heads rudder and tiller all of sound good oak of a size and
construction fit for such a vessel to have gunports all
the timbers and planks to be made use of in building the
hull of the said vessel (except the planks with which the
decks are laid and which are to be of Norway deal as afore-
said) are to be oak of English growth well seasoned and dried
and in every respect fit for the purposes to which the same shall
be applied the trennels to be bought at and be of the best
sort the hatches to be made and constructed in the best and most
approved manner the hull and deck of the said vessel to be well
caulked with well teased oakum and fitted up and finished in a
substantial and workmanlike manner with all things necessary
and usually made and provided by shipbuilders for ships of such
burthen and construction as the said vessel is intended to be.



No.
DCXXVIII.
*Agreement to
build Ship and
let to Freight.*

No. DCXXVIII.

*An Agreement by a Builder to build a Merchant Ship, and to let
the same to Freight.*

*This Indenture made &c. Between (merchant) of &c. merchant
of the one part and (shipbuilder) of &c. shipbuilder of the other
part Whereas the said (builder) hath agreed with the said (M.)
to build a ship of the dimensions mentioned in the schedule
hereunto annexed and to let the same when completed on hire to
the said (M.) to freight for several voyages to be made with
her from London to and back again to London on the terms
and conditions mentioned in the schedule hereunto annexed
No. I. Now this Indenture witnesseth That in consideration of the
premises the said (B.) for himself his heirs executors and admini-
strators Doth hereby covenant and agree with the said (M.)
his executors administrators and assigns in manner following*

Covenant by
builder to
build,

(that is to say) That he the said (*B.*) shall and will at his own proper costs and charges in all things build or cause to be built within the space of calendar months from the date hereof one good ship of not less than tons and not exceeding tons burthen and with such materials and to be furnished and provided in such manner as are particularly mentioned in the schedule No. II. *And* that when the said ship shall be completed he the said (*B.*) shall let the same to him the said (*M.*) for several and successive voyages at such freight and demurrage and upon such terms and conditions as are particularly mentioned in the schedule hereunto annexed No. III. *And* for that purpose the said ship shall at the costs and charges of the said (*B.*) his executors administrators or assigns be from time to time repaired fitted armed stored and provided in all things according to the terms and conditions mentioned in the said last mentioned schedule and as the same ought to be repaired fitted armed stored and provided for the service aforesaid according to the usage and customs of merchants *And* the said (*B.*) or other managing owner or owners of the said ship and the commander thereof shall and will from voyage to voyage enter into a charter-party of the said ship to the said (*M.*) for the said respective voyages upon the terms in the same schedules mentioned and in which said charter-parties such further stipulations provisions and agreements as shall be necessary and reasonable shall from time to time be inserted *And* that the said ship shall not until she shall have performed such several voyages as aforesaid be employed in any other service or upon any other occasion whatsoever than in and upon the service of the said (*M.*) without the consent in writing of him the said (*M.*) his executors or administrators first had and obtained *And* that during such time as the said ship shall remain in the service of the said (*M.*) the said (*B.*) his executors administrators and assigns and all and every other the owners commanders officers and crew of the said ship shall and will from time to time in all things conform themselves to and shall and will submit obey and conform as well in the equipment of the said ship as otherwise to the lawful and reasonable orders instructions and directions which shall from time to time be given by the said (*M.*) his executors or administrators *Provided always* that in case of breach of these covenants and agreements aforesaid or any of them by or on the part of the said (*B.*) or of any of the terms stipulations or agreements contained in or

No.
DCXXVIII.
*Agreement to
build Ship and
let to Freight.*

and let to hire
when finished.

Will enter into
a charter-
party.

Ship not to be
otherwise em-
ployed.

Owner, &c. will
conform to
directions of
merchant.

On breach of
this agreement,
merchant may
refuse the ship.

No.
DCXXVIII.Agreement to
build Ship and
let to Freight.

arising out of all any or either of the several schedules hereunto annexed it shall be lawful to and for the said (*M.*) his executors or administrators to reject the said ship wholly from his service or employ and also to recover a satisfaction for the damages occasioned by any such breach of covenant and the penalty of any obligation entered into for the due performance of this covenant or to seek any other such remedies as he or they shall see fit anything hereinbefore contained to the contrary thereof in anywise notwithstanding *In witness &c.*

The schedules referred to in the above agreement may be divided into, No. I. The dimensions and scantlings of the ship. No. II. The inventory of stores. No. III. The charter-party.

No. DCXXIX.

No. DCXXIX.

*Between Master
and Passengers.**Agreement between the Master of a Ship and his Passengers (a).*Master agrees
to receive pas-
sengers.

Articles &c. Between (*master*) of &c. master of the ship called bound on a voyage to of the one part and A. B. C. &c. (*passengers*) for themselves and for and on behalf of about other persons going as passengers in the said ship of the other part as follows (that is to say) The said (*M.*) doth hereby covenant promise and agree with and to the said A. B. C. &c. their heirs executors administrators and assigns that in consideration of his being paid the sum of £ of lawful money of Great Britain per head by or for so much and so many of the said persons as intend to go as passengers in the said ship accounting two children under ten years of age as equal to one person at or before his her or their entrance on board the said ship he the said (*M.*) will receive him her or them by whom he shall be so paid as aforesaid on board the said ship within days after the date hereof and a chest or trunk for each passenger and will provide them with cabins and convenient room for lodging and wholesome and sufficient victuals and provisions during the said voyage and will with all convenient speed depart from and out of the river and sail direct for the city of in and will there deliver the said passengers with their trunks chests and goods ashore in safety (the dangers of the sea &c. only excepted) *And* the said (*M.*)

(a) See the Passengers Act, 1855, 18 & 19 Vict. c. 119.

doth hereby acknowledge to have received an order on Messrs. No. DCXXIX.
C. and L. bankers for the sum of £ in part payment of that *Between Master and Passengers.*
which the said (*M.*) is to receive for the said passengers *And* Passengers
the said A. B. C. &c. on behalf of themselves and the said other agree to go on
passengers do hereby covenant promise and agree with and to board on notice
the said (*M.*) that they shall and will go on board at any being given,
time upon days' notice being given to the said A. B. C. and pay re-
&c. by the said (*M.*) and that the sum of £ being the residue of pas-
residue of what the said (*M.*) is to receive for the said pas- sage money.
sengers as before mentioned shall then by the said A. B. C. &c.
be duly paid unto the said (*M.*) *In witness &c.*

No. DCXXX.

Agreement for the Sale of a Ship.

No. DCXXX.

Sale of a Ship.

Articles &c. Between (*vendor*) of &c. of the one part and
(*purchaser*) of &c. of the other part *Witness* as follow That
the said (*V.*) for the considerations hereinafter mentioned doth
hereby for himself &c. agree to sell unto the said (*P.*) the hull
or body of a new ship or vessel of the following dimensions [*here*
set out the dimensions] computed to be of the burthen of
tons be the same more or less *And* the said (*V.*) shall and will
at his own charge and expense in a substantial and workman- And at his own
like manner do and perform the several works in and about the expense finish
said hull of the said ship as follows (that is to say) &c. [*here set the hull,*
out the works] *And* shall and will find and provide a complete
suit of masts and yards fitting for such a ship *And* will likewise
do and perform all joiners' painters' and plumbers' work and all
other works for the complete finishing the said hull or body of
the said ship according to the custom of the shipwrights of the
River Thames and will launch her in the River Thames and de-
liver her safe unto the said (*P.*) *And* the said (*P.*) in considera- and launch the
tion of the premises doth hereby agree with the said (*V.*) by ship when com-
these presents that he the said (*P.*) his executors adminis- pleted.
trators or assigns shall and will truly pay or cause to be paid Purchaser
£ per ton agrees to pay
for the ship.
unto the said (*V.*) his executors administrators or assigns so
much lawful money of Great Britain as the said ship at or after
the rate of £ per ton and proportionably for a lesser
quantity than a ton shall amount unto upon admeasurement ac-
cording to the rule and custom of the shipwrights of the River

No. DCXXX. Thames in manner following (that is to say) the sum of £
Sale of a Ship. part thereof on the day of and the remainder of the
 purchase money on the launching and mooring the said vessel
 in safety he the said (V.) his executors or administrators at the
 time of the first payment executing and delivering at the costs
 and charges of him the said (P.) a sufficient bill of sale of the
 said hull of the said ship with her appurtenances unto the said
 (P.) his executors administrators or assigns or to such other
 person or persons as he or they shall order or direct *Witness*
the hands &c.



No. DCXXXI.

No. DCXXXI.

*Sale of a Ship.**Agreement for Sale of a Ship.*

Agreement made this day of 185 Between A. B.
 of &c. of the one part and C. D. of &c. of the other part The
 said C. D. agrees to buy and the said A. B. agrees to sell the
 good ship or vessel called the Byron built of the
 measurement of tons or thereabouts now lying in the River
 Thames for the sum of £ to be paid as follows and
 two guineas to the broker to bind the bargain which said ship
 or vessel hath been duly registered pursuant to the Act of Par-
 liament for that purpose made and provided on payment of the
 whole of the purchase money as aforesaid a legal bill or bills
 of sale shall be made out and executed to the purchaser or pur-
 chasers at his or their expense *And* the said ship or vessel with
 what belongs to her shall be delivered according to the inven-
 tory which has been exhibited but the said inventory shall be
 made good as to quantity only *And* the said ship or vessel
 together with her stores shall be taken with all faults in the
 state and condition in which they now lie without any allowance
 or abatement whatsoever within one month from the date hereof
But in case any default shall be made by the purchaser or pur-
 chasers in the payment above mentioned the money so paid in
 part shall be forfeited to the sole use of the present proprietor
 and shall be at full liberty to put up and sell the said ship
 or vessel again either by public or private sale and the deficiency
 (if any) by such resale shall be made good by the said defaulting
 purchaser who shall be responsible for risks of every description
 subsequent to the present purchase and for all charges that may

be incurred in consequence of non-compliance with this agreement No. DCXXXI.
And neither the said broker nor any of the present proprietors Sale of a Ship.
 his or their heirs executors administrators or assigns shall be
 anyways accountable or liable to be sued either at law or equity
 for the said money paid in part and forfeited as aforesaid The
 said ship is declared to be at the risk of the purchaser immedi-
 ately after the said C. D. shall be put into possession of her *As*
witness the hands of the parties the day and year above written
 Witness

BILLS OF LADING.

- | | |
|--|---|
| 1. <i>Definition.</i>
<i>When given.</i>
2. <i>Form of.</i>
<i>Clauses in.</i>
<i>Variations.</i>
3. <i>Transferable.</i> | By <i>Indorsement.</i>
<i>Indorsement in Blank.</i>
<i>Without Indorsement.</i>
4. <i>Act to amend the Law relating to</i>
<i>Bills of Lading.</i>
5. <i>Stamp Duty.</i> |
|--|---|

SECT. 1. A bill of lading is an acknowledgment by the master of Definition.
 having received the goods from the shipper to be conveyed on the
 terms therein expressed and there delivered to the parties by him
 designated, Abbott on Shipping, 236, 10th ed., *Lickbarrow v.*
Mason, 2 T. R. 75. Of this there are usually three parts, one kept
 by the shipper or consignor, one sent to the consignee, and one
 kept by the shipmaster or captain, *Ibid.*, 2 T. R. 72. A bill
 of lading is usually given as a contract for the conveyance of a
 single article on board a ship that has sundry merchandize shipped
 for different persons; and in this respect it differs from a charter-
 party, which is a contract for the use of the whole ship. When given.

2. In the old form of a bill of lading the exception ran simply thus, Form of.
 "the dangers of the sea excepted;" but, in consequence of the deci-
 sion in *Smith v. Shepherd*, cited in Abbott on Shipping, 235, 10th ed.
 by Serjt. Shee, it was altered to the form now in use. Other clauses Clauses in.
 may be added to take away the responsibility of the master or owners;
 as in the case of ships homeward bound from the West Indies a saving
 clause is added, "save risk of boats so far as ships are liable thereto,"
Johnson v. Benson, 1 Brod. & B. 454; or for securing some ad-
 vantage to the owner, as the payment of demurrage, by the words
 "to be taken out in fourteen days, or to pay eighty shillings a day
 for demurrage," *Harrison v. Clarke*, 4 Campb. 159. A stipulation
 in a bill of lading that the shipowner "is not to be accountable for

- Bills of Lading.* leakage or breakage," does not exempt him from responsibility for a loss by these means, arising from *gross negligence*, *Phillips v. Clack*, 2 C. B., N. S. 156. The name of a consignee is sometimes mentioned, but sometimes the shipper or consignor is himself named as consignee, and the engagement is to deliver to him or his assigns; sometimes no person is named, as, "To be delivered &c. unto order or assigns," importing an engagement on the part of the master to deliver the goods to the person to whom the shipper or consignor shall order the delivery, or to the assignee of such person.
- Variations. 3. Bills of lading are negotiable by the custom of merchants, the consignee of a bill of lading having such a property that he may assign it over, *Evans v. Martlett*, 1 Ld. Raym. 271. They are transferred by indorsement and delivery of them by the shipper or consignor. An indorsement may be either in blank, that is, with the name of the shipper only, without describing or naming the person to whom the delivery is directed to be made; or it may be special, that is, it may define the person who may receive the goods. The effect of both is pretty nearly the same. An indorsement in blank may be filled up by the person to whom it is delivered, with words ordering the delivery of the goods, or contents of the bill of lading, to be made to the person named; and such an indorsement will have the same operation as if it had been made by the consignor himself, and the *bonâ fide* holder or bearer of the bill of lading so indorsed may receive the goods, and his receipt will discharge the shipmaster, *Lickbarrow v. Mason*, 2 T. R. 75; 5 T. R. 686; *Mason v. Lickbarrow*, 1 H. Bl. 360; see *Gurney v. Behrend*, 3 Ell. & Bl. 637. The property in a cargo may be transferred by delivery of the goods without indorsement of the bill of lading, and the transfer will be good against all the world, except subsequent indorseees of the bill of lading for a valuable consideration, *Nathan v. Giles*, 5 Taunt. 558. An indorsement without consideration does not transfer any property, *Waring v. Cox*, 1 Campb. 369. So when a bill of lading is endorsed upon condition, the condition must be fulfilled, to entitle the indorsee to the benefit of it, *Barrow v. Coles*, 3 Campb. 92. How far the negotiation of a bill of lading may tend to defeat the right of stoppage *in transitu*, see Selw. N. P. pp. 1292—1294, 12th ed.
- Transferable. 4. The Act 18 & 19 Vict. c. 111, recites that, by the custom of merchants, a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; and it also recites, that it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide*
- By indorsement.
- Indorsement in blank.
- Without indorsement.
- Act to amend the Law relating to Bills of Lading.

holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid. It is then enacted as follows :—

I. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Rights under bills of lading to vest in consignee or endorsee.

II. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Not to affect right of stoppage in transitu or claims for freight.

III. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against master, &c.

Proviso.

5. By 5 & 6 Vict. c. 79, a bill of lading of or for any goods, merchandize or effects exported or carried coastwise is charged with a stamp of 6*d*. Bills of lading are not to be stamped after signing, except in specified cases, *Ib.* s. 21.

Stamp.

No. DCXXXII.

A Bill of Lading. (General Form.)

Obs. As to the stamp, see Pref. sect. 5.

No.
DCXXXII.
Bill of Lading.

Shipped in good order and well conditioned by A. B. merchant in and upon the good ship called the Good Hope whereof is master for this present voyage C. D. and now riding at anchor in the River Thames and bound for Barcelona in Spain being marked and numbered as in the margin and are to be delivered in the like good order and well conditioned at the

No.
DCXXXII.
Bill of Lading.

aforesaid port of Barcelona the act of God the Queen's enemies fire all and every other dangers and accidents of the seas rivers and navigation of whatever nature or kind soever save risk of boats so far as ships are liable thereto excepted unto E. F. of &c. or to his or their assigns on his paying freight for the said goods £ per piece with primage (a) and average (b) accustomed *In witness* whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date one of which bills being accomplished the others to stand void Dated in 185

No.
DCXXXIII.
Bill of Lading
(*Steamer*).

No. DCXXXIII.
Bill of Lading (Steamer).

Shipped in good order and condition by in and upon the steam ship called the whereof is master for the present voyage or whoever else may go as master in the said ship and now lying in the Port of London and bound for Gibraltar and Cadiz with liberty to call and stay at any port or ports on the coast of Spain or Portugal to discharge or receive cargo being marked and numbered as in the margin and are to be delivered in the like good order and condition at the aforesaid port of (the act of God the Queen's enemies pirates restraint of princes and rulers fire at sea or on shore accidents from machinery boilers steam or any other accidents of the seas rivers and steam navigation of whatever nature or kind soever excepted and with liberty to sail with or without pilots and to tow and assist vessels in all situations) unto or to assigns he or they paying freight for the said goods (c) in the usual currency at the current rate of exchange with per cent. primage and average as accustomed *In witness* whereof the master or agents of the said ship hath affirmed to two bills of lading both of this tenor and date the one of which bills being accomplished the other is to stand void
Dated in London 185

(a) The word "primage" denotes a small payment to the master for his care and trouble, which he is to receive for his own use, unless he has otherwise agreed with the owners, *Scott v. Miller*, 5 Scott, 51.

(b) The word "average" in this place denotes several petty charges which are to be borne partly by the ship and partly by the cargo, such as the expenses of towage, beaconage, &c. which depend entirely upon usage in this country, Abbott on Shipping, p. 306, 10th ed.

(c) Weight, contents and value unknown, and not answerable for leakage,

No. DCXXXIV.

No.
DCXXXIV.
*Agreement to
indemnify
Master.*

An Agreement between Owners of a Ship and a Captain or Master leaving the Ship, to indemnify him against Bills of Lading &c. contracted by him for their use.

Articles of Agreement entered into this day of in the year of our Lord 185 Between (owners) of &c. owners of the ship hereinafter mentioned of the one part and (master) of &c. of the other part *Whereas* the said (M.) master of the ship or vessel called the of the burthen of tons or thereabouts now at hath contracted and agreed with several persons for necessary work done to the said ship and for goods and stores delivered for the said ship's use and hath also signed and delivered out several bills of lading for sundry goods and merchandizes now on board the said ship and to be delivered at or other parts whither she is now bound at the freight therein mentioned as by the said several bills and the accounts thereof signed by the said (O.) and hereupon indorsed doth appear *And whereas* the said (M.) with the consent of the said (O.) hath resigned the command of the said ship as master and delivered or agreed to deliver[†] the possession thereof to such person as the said (O.) have appointed or may appoint to succeed him as master thereof *Now these presents witness* That they the said (O.) for themselves severally and respectively and for their several and respective executors and administrators but not jointly nor any one of them for the other nor for the acts or deeds of the other do hereby covenant and agree with the said (M.) his executors and administrators in manner following (that is to say) That each of them the said (O.) respectively their respective executors and administrators according to their several parts of and in the said ship shall and will pay or cause to be paid their respective proportions of the several bills delivered and mentioned in the indorsement hereon and by them severally subscribed for work done and goods and stores delivered for the said ship's use for her said

Owners covenant with master.

To pay bills.

breakage, corruption or insufficiency of packages and wrong delivery of goods caused by error or insufficiency in the marks or numbers. The goods to be taken from the ship by the agents of the company immediately the vessel is ready to discharge, at the merchants' risk and expense and immediately the goods are landed on the wharf they will be at the further risk of the merchants.

No.
DCXXXIV.

*Agreement to
indemnify
Master.*

And indemnify
owners.

intended voyage and that each of them the said (*O.*) their respective executors and administrators will at all times hereafter save and keep harmless and indemnified the said (*M.*) his executors and administrators and his and their goods chattels and estate from and against their respective proportions of the said bills *And also* of and from the said several bills of lading so by him the said (*M.*) signed and delivered for goods and merchandizes received or to be delivered on board the said ship and from and against all actions suits costs charges and damages whatever which shall or may be commenced prosecuted recovered or awarded against him or them or which he or they may sustain or be put or be liable unto for or concerning the same *In witness &c.*

Indorsement above referred to.



No.
DCXXXV.

*Bonds
(Bottomry).*
Bottomry.

No. DCXXXV.

Bottomry Bond.

Obs. 1. Bottomry is a contract by which the owner of a ship borrows money, and pledges the keel or bottom of a ship for a part or for the whole of the repayment. In this case it is understood, that if the ship is lost, the lender loses his whole money; but if it return in safety, then he is to receive back his principal, and such interest as is agreed upon. This agreement is sometimes in the form of a deed-poll, called a bill of bottomry, executed by the borrower, and sometimes in the form of a bond with a penalty. As to the requisites to the validity of bottomry bonds, see Abbott on Shipping, pp. 117—120, 10th ed.; Selw. N. P. pp. 1037, 1038, 12th ed.; Smith's Mercantile Law, pp. 419—424, 6th ed.; 2 Levi's Commercial Law, pp. 270—279.

Respondentia.

2. When money is lent upon the goods, and not upon the vessel, it is called a *respondentia* bond, the repayment whereof is made to depend upon the safe arrival of the merchandize at the destined port, Abbott on Shipping, p. 112, 10th ed.

Obligation.

Know all Men to whom these Presents shall come I (master) of &c. mariner part owner and master of the ship called the Good Hope of the burthen of tons and upwards now riding at am held and firmly bound unto (*obligee*) in the penal sum of £ for the payment of which to be well and truly made I hereby bind myself my heirs executors and administrators firmly

by these presents *In witness* whereof I have hereunto set my hand and seal this day of in the year &c.

No.
DCXXXV.

Bonds
(*Bottomry*).

And whereas the said (*obligee*) hath lent the said (*M.*) the sum of £ to enable him to prosecute the voyage from the port of L. to B. and hath agreed to stand to and bear the hazard and adventure thereof on the hull or body of the said ship so as that the period of the said voyage do not exceed calendar months.

Recital of the
voyage.

Now the Condition of the Obligation is such That if the said ship do and shall with all convenient speed sail from and return to without deviation except by the casualties of the sea and also if the above bounden (*O.*) his heirs executors or administrators do and shall within the space of days next after the return and arrival of the said ship at at the end and expiration of calendar months to be accounted from the day of the date of the above written obligation (which of the said terms shall first happen) well and truly pay or cause to be paid unto the said (*O.*) his executors administrators or assigns the sum of £ of &c. or if in the said voyage and within the said period of calendar months to be accounted as aforesaid an utter loss of the said ship or vessel by fire enemies pirates or any other casualty shall unavoidably happen to be sufficiently proved by the said (*O.*) his executors or administrators Then &c.

Condition.

No. DCXXXVI.

Bottomry Bond (a).

No.
DCXXXVI.

Bonds
(*Bottomry*).

Know all Men by these Presents That I A. B. of now master and commander of the or vessel called the of the burthen of tons or thereabouts now lying in the port of am held and firmly bound unto C. D. of &c. in the penal sum of £ to be paid to the said C. D. or to his certain attorney executors administrators or assigns for which payment well and truly to be made I bind myself my heirs executors and administrators *And also* the said vessel her tackle apparel and furniture firmly by these presents sealed with my seal at this day of in the year of our Lord

(a) See another Form, Abbott on Shipping, by Shee, App. p. 289, 10th ed.

No.
DCXXXVI.
Bonds
(*Bottomry*).

one thousand eight hundred and *Whereas* the above bounden A. B. hath taken up and received of the said C. D. the sum of £ sterling which sum is to be and remain as a lien and bottomry on the said vessel her tackle apparel and furniture at the rate or premium of twenty-five per cent. for the voyage In consideration whereof all risks of the seas rivers enemies fires pirates &c. are to be on account of the said C. D. *And* for the better security of the said sum and premium the said master *Doth* by these presents hypothecate and assign over to the said C. D. his heirs executors administrators and assigns the said vessel her tackle apparel and furniture *And it is hereby declared* that the said vessel is thus hypothecated and assigned over for the security of the money so borrowed and taken up as aforesaid and shall be delivered for no other use or purpose whatever until this bond is first paid together with the premium hereby agreed to be paid thereon *Now* the condition of this obligation is such That if the above bounden A. B. his heirs executors or administrators shall well and truly pay or cause to be paid unto the said C. D. or to his attorneys in London legally authorized to receive the same their executors administrators or assigns the just and full sum of £ sterling being the sum borrowed together with the premium aforesaid at or before the expiration of days after the arrival of the said vessel at or in case of the loss of the said vessel such an average as by custom shall have become due on the salvage Then this obligation and the said hypothecation to be void and null otherwise to remain in full force and virtue having signed and executed three bonds of the same tenor and date one of which being accomplished the other two to be void and of no effect.

Signed sealed and delivered in the presence of .



No.
DCXXXVII.
Bonds
(*Respondentia*).

No. DCXXXVII.

A Respondentia Bond.

Obs. As to *respondentia* bonds, see *Bottomry Bonds*, *Obs.* 2.

Obligation.
Recitals.

Know all Men to whom these Presents shall come That I (*obligor*) am &c. [see *ante*, last *Precedent*] *Whereas* the above named (*obligee*) hath on the day of the date of the above written obligation advanced and lent unto the above bounden (*obligor*) the

sum of £ upon goods merchandizes and effects laden or to be laden on board the ship or vessel called &c. whereof is master and which said sum is to rate at respondentia on the said goods *Now the condition* of &c. That if the said ship or vessel do proceed to and thence return to at or before the expiration of calendar months from the date &c. and that without deviation (the dangers and casualties of the sea only excepted) and if the above bounden (*obligor*) his executors &c. do and shall within the space of days next after the arrival of the said ship &c. or at the end &c. which of the said terms shall first happen well and truly pay &c. or if in the said voyage and within the said calendar months to be accounted as aforesaid an utter loss of the vessel by fire enemies men-of-war or any other casualties shall unavoidably happen and the above bounden (*obligor*) his heirs &c. do and shall within the space of calendar months next after such loss well and truly account for upon oath if required and pay and satisfy the said (*obligor*) a just and proportionable average on all goods merchandize and effects of the said (*obligor*) carried out on board the said ship or vessel and the net proceeds thereof and on all other goods merchandize and effects which the said (*obligor*) shall or may acquire during the said voyage and which shall not be unavoidably lost Then &c.

No.
DCXXXVII.
Bonds
(*Respondentia*).
Condition.

—◆—

No. DCXXXVIII.

Respondentia Bond on Voyage to East Indies (a).

Know all Men by these Presents That we A. B. commander of the ship and C. D. of are held and firmly bound by H. B. of street London merchant in the sum or penalty of £ of lawful money of Great Britain to be paid to the said H. B. or to his certain attorney executors administrators or assigns to which payment well and truly to be made we bind ourselves jointly and separately our heirs executors and administrators firmly by these presents Sealed with our seals Dated this day of in the year of our Lord one thousand eight hundred and fifty *Whereas* the above named H. B. has on the day of the date of the above written obligation advanced and

No.
DCXXXVIII.
Bonds
(*Respondentia*).

(a) See Abbott on Shipping, by Shee, App. p. 291, 10th ed.

No.
DCXXXVIII.
Bonds
(*Respondentia*).

lent unto the said (*obligors*) the sum of £ upon the goods merchandizes and effects laden on board the good ship and vessel called the of the burden of tons or thereabouts now riding at anchor in the River Thames outward bound to China and whereof the said A. B. is commander by his acceptance of a bill of exchange to that amount at four months date for the account of them the said (*obligors*) *Now* the condition of this obligation is such that if the said ship or vessel do and shall with all convenient speed proceed and sail from and out of the said River Thames on a voyage to any port or place ports or places in the East Indies or China Persia or elsewhere beyond the Cape of Good Hope and from thence do and shall sail return and come back into the said River Thames at or before the end and expiration of thirty-six calendar months to be accounted from the day of the date of the above written obligation and there to end her said intended voyage (the dangers and casualties of the seas excepted) *And* if the said (*obligors*) or either of them their or either of their heirs executors or administrators do and shall within thirty days next after the said ship or vessel shall be arrived at her mooring in the said River Thames from her said intended voyage or at or upon the end and expiration of the said thirty-six calendar months to be accounted as aforesaid (which of the said times shall first and next happen) well and truly pay or cause to be paid unto the said H. B. his executors administrators or assigns the full sum of £ of lawful money of Great Britain together with £ of like money per calendar month for each and every calendar month and so proportionably for a greater or less time than a calendar month for all such time and so many calendar months as shall be elapsed and run out of the said thirty-six calendar months over and above twenty calendar months to be accounted from the day of the date of the above written obligation or if in the said voyage and within the said thirty-six calendar months to be accounted as aforesaid an utter loss of the said ship or vessel by fire or enemies men-of-war or any other casualties shall unavoidably happen *And* the said (*obligors*) their heirs executors or administrators do and shall within six calendar months next after such loss well and truly account for (upon oath if required) and pay unto the said H. B. his executors administrators or assigns a just and proportionable average on all the goods and effects of the said A. B. carried from England on board the said ship or vessel and the net proceeds thereof and on all other goods and

effects which the said A. B. shall acquire during the said voyage for or by reason of such goods merchandizes and effects and which shall not be unavoidably lost Then the above written obligation to be void and of none effect else to stand in full force and virtue.

No.
DCXXXVIII.
Bonds
(*Respondentia*).

CHARTER-PARTIES.

- | | |
|--|---|
| 1. <i>Definition.</i>
<i>By Parol or by Deed.</i>
<i>Effect of Declaration of War.</i> | 5. <i>Covenant that Ship is Seaworthy.</i> |
| 2. <i>Parties.</i>
<i>When it begins to take effect.</i> | 6. <i>Mode of Loading.</i>
<i>Covenant to load a complete Cargo.</i> |
| 3. <i>Words of Demise in Charter-Party.</i>
<i>Lien of Freight.</i>
<i>To what Extent.</i> | 7. <i>Covenants on the Part of Freight.</i> |
| 4. <i>Apportionment of Freight.</i> | 8. <i>Demurrage Clause.</i> |
| | 9. <i>Penal Clause.</i> |
| | 10. <i>Stamp Duty.</i> |

SECT. 1. The contract by a charter-party is defined to be that “by Definition. which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places,” Abbott on Shipping, p. 168, 10th ed. The instrument by which it is recorded, and which though often by deed is not necessarily so, is generally executed by the owner of the ship when made at the place of his residence, and sometimes by the master also, Smith’s Mercantile Law, 399, 400, 6th ed.; see *Lidgett v. Williams*, 4 Hare, 456; 2 Levi’s Commercial Law, 240—244. When it is for the hire of only part of the vessel it is a bill of lading (see *BILLS OF LADING*, ante, p. 1481). It may be under hand only, or under hand and seal. When it is under seal, no parol agreement can be substituted to control the effect of the deed, *White v. Parkin*, 12 East, 578; *Gibbon v. Young*, 2 B. Moore, 224. See Stephen’s Comm., pp. 137—140, 4th ed.

By parol or by deed.

A declaration of war imports a prohibition of commercial intercourse and correspondence with the inhabitants of the enemy’s country, and such intercourse, except with the licence of the Crown, is illegal. For a British subject not domiciled in a neutral country to ship a cargo from an enemy’s port, even in a neutral vessel, without licence, is an act *prima facie* and under all ordinary circumstances a dealing and trading with the enemy, and therefore forbidden by law, *Exposito v. Bowden*, 7 Ell. & Bl. 763.

Effect of declaration of war.

Charter-Parties
Parties.

2. The parties in a charter-party may be either the principals themselves, that is, the owners, or their agents, that is, the master or broker. A memorandum of charter-party expressed to be made "between P., of the good ship C., and W., agent for E. W. & Son," to whom the ship was to be addressed, and signed by W. without any restriction, was held to make W. personally liable as charterer; it would have been otherwise if he had signed as by procuration for E. W. & Son, *Parker v. Winlow*, 7 Ell. & Bl. 942. If the vessel be in foreign ports, it is usually made by the master for the owners; but if the charter-party be executed by the master, it ought not to be done in his own name, nor without authority given to him by deed. A charter-party begins to take effect from the day it is sealed and delivered, and not from the day of the date.

When it begins to take effect.

Words of demise in charter-party.

3. The words, "grant, and let to hire," in a charter-party, are proper words of demise, which of themselves pass the possession of the ship; but where there are no such express words of demise of the ship itself in a charter-party, the freighter does not thereby become the owner for the voyage, but the possession remains in the owner, and he therefore has a lien upon the cargo for his freight, *Saville v. Campion*, 2 B. & Ald. 503; and even where there are such words, yet if, from the terms of the whole instrument, it does not appear to be the intention of the parties to give the freighter possession of the ship, the courts will construe it to be matter of contract only, which does not divest the owner of lien on the cargo. The common law right of lien is confined to the specific chattels in respect of which the payment of freight is claimed, and consequently goods cannot be detained for a breach of a covenant to furnish a full cargo; nor for demurrage, pilotage, or port-charges; but it may be controlled by the contract of the parties. As to lien for freight, see *Gilkison v. Middleton*, 2 C. B., N. S. 134; *Colvin v. Newberry*, 1 Cl. & Fin. 283; 7 Bing. 190; *Nash v. Graham*, 8 Ell. & Bl. 505; *Marquand v. Banner*, 6 Ell. & Bl. 232.

Lien of freighter.

To what extent.

Apportionment of freight.

4. Where the freight is expressed to be a sum of money for every ton, cask, or bale of goods, it is usual and proper to add the words, "and so in proportion for a less quantity than a ton;" otherwise, it has been held, that freight cannot be claimed for a smaller quantity, as a hoghead.

Covenant that ship is seaworthy.

5. Under the usual covenant, that the ship shall be seaworthy, it has been held that a carrier by water is answerable for leakage; and the words, "tight and stanch," and "furnished with everything necessary for the voyage," extend to the furniture, crew, pilot, and stores. See *Tarrabochia v. Hickie*, 1 H. & N. 183, *post*, p. 1496, n. (a).

Mode of loading.

6. The duty and mode of loading, in the absence of all stipulation, is regulated by the usage and custom of the place. But it has been held that a master is answerable for bad stowage. The charter-party

Covenant to

usually expresses the burthen of the ship; but, notwithstanding this description, if a freighter covenant to load a full and complete cargo, he is bound to put on board as many goods as the ship is capable of carrying with safety; but a covenant on the part of a master to load a complete cargo is not a condition precedent to the right of freight.

Charter-Parties
load a complete
cargo.

7. The freighter usually covenants, "in consideration of the premises," to pay freight, &c., but nothing will be considered as a condition precedent which does not go to the whole root and consideration of the contract, and the owner may recover freight, although some of the stipulations have not been performed, *Davidson v. Gwynne*, 12 East, 389; but if the freighter sustain any injury by the breach of any covenant, he is entitled to a compensation in damages in proportion to his loss, *Ib.*

Covenants on
the part of the
freighter.

8. The usual clause, called the clause of demurrage, that a certain specified number of days, called working or lay days, shall be allowed for loading or unloading, constitutes a contract not to detain the ship beyond the stipulated periods, *Randall v. Lynch*, 12 East, 179; and if the ship be detained beyond these periods, the daily rate of demurrage, and sometimes even more than that may be recovered, *Moorson v. Bell*, 2 Campb. 616; and it seems, that if a merchant engage to do what afterwards proves impracticable, he must still answer for the default, *Barker v. Hodgson*, 3 Mau. & S. 267. In the clause of demurrage, the word "days" alone will be understood to signify lay or working days, not running days, *Cochran v. Retberg*, 3 Esp. 121. It is better to mention working or running days expressly, according to the intention of the parties. If there be no usage to the contrary, and no express exclusion of them, Sundays will be computed in the calculation, *Brown v. Johnson*, 10 M. & W. 331.

Demurrage
clause.

9. The charter-party usually concludes with the penal clause, as to the general effect of which, see AGREEMENTS, *ante*, p. 80. This clause has been held not to give a lien on the goods, *Birley v. Gladstone*, 3 Mau. & S. 205.

Penal clause.

10. By 5 & 6 Vict. c. 79, a stamp of 5s. is imposed on any charter-party, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter or other writing between the captain, master or owner of any ship or vessel and any other person, for or relating to the freight or conveyance of any money, goods or effects on board of such ship or vessel. A charter-party may be stamped within fourteen days after the date, on payment of the duty, or within one calendar month after the date, on payment of the duty and a penalty of 10*l.*, *Ib.* s. 21. See further as to charter-parties, Abbott on Shipping, by Serjt. Shee, 10th ed.; Holt's Treatise on Shipping; Law on Charter-Parties; 3 Chitty's Commercial Law; Selw. N. P., tit. Shipping, 12th ed.; Smith's Mercantile Law, pp. 299—338, 6th ed.

Stamp duty.

No.
DCXXXIX.

No. DCXXXIX.

Charter-Party. A Charter-Party to carry Goods to a Port abroad, and return with other Goods. (General Form.)

Obs. As to the nature of the instrument, and the necessary stamp, see *ante*, Pref. sect. 10.

<p>In the name of God Amen This charty-party of affreightment indented made and concluded between A. B. of &c. owner (<i>a</i>) [or "master"] of the good ship or vessel called burthen about (<i>b</i>) tons of the one part and C. D. of &c. of the other part</p> <p>Grant of ship.</p> <p>Covenants from owner or master.</p> <p>To fit ship.</p> <p>To load goods.</p> <p>To sail.</p> <p>To deliver lading.</p> <p>To take in homeward cargo.</p> <p>To sail homeward.</p>	<p><i>Witnesseth</i> that the said A. B. owner thereof doth hereby (<i>c</i>) grant and to freight let unto the said C. D. (<i>d</i>) the said ship or vessel and the said C. D. hath actually hired the same for the voyage hereunder mentioned <i>And</i> therefore the said A. B. doth hereby for himself &c. covenant &c. with and to the said (<i>e</i>) C. D. in manner following (that is to say) That the said ship shall be rendered tight stout and stanch and be fitted made ready and provided with all things (<i>f</i>) fitting for such a ship and voyage and shall receive and take on board her all such goods as the said C. D. shall load on board her outwards (with respect to the several parts of the tonnage to him letten) and shall sail directly unto L. and within days after her arrival there or sooner shall unload and deliver all her said outward loading unto the factors of the said C. D. <i>And</i> there receive and load and take aboard her all such goods as his factors respectively shall load or tender to be laden aboard the said ship for the full loading the several parts of her tonnage to him letten as much as can be stowed and carried in her over and above her victuals tackle and apparel <i>And</i> (<i>g</i>) being so laden and</p>
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(*a*) See Pref. sect. 2. If the master be a party, say, "as attorney of (*owner*)."

(*b*) See Pref. sect. 6.

(*c*) See Pref. sect. 3.

(*d*) If there be several freighters, say, "unto the said C. D. E. F. &c. severally."

(*e*) Or, with several, "with and to the said C. D. E. F. &c. jointly and severally."

(*f*) As to the extent of this covenant, see Pref. sect. 5.

(*g*) If it be so agreed, say, "*And* shall not nor will in either of the said outward or homeward voyage take or load or cause &c. to be taken on board the said ship or vessel any goods merchandizes packets letters or parcels whatsoever from any other person or persons whomsoever other than the said C. D. freighter without his consent or the consent of his agents or assigns in writing for that purpose first had and obtained."

dispatched she shall depart thence for England and return and come directly into the River Thames as near the city as she conveniently can and within days after her arrival there shall make a right discharge and delivery of all her said homeward loading unto the said merchant his executors and administrators respectively and end and finish her said intended voyage (wind (*a*) and weather the dangers of the sea and the restraints of princes and rulers always excepted) And (*b*) the said C. D. in consideration of the premises (*c*) doth hereby covenant &c. with &c. the said A. B. &c. that he the said C. D. his executors &c. shall and will unload his outward goods and fully load the said ship at to the amount of the said ship's tonnage to him letten at with [*here describe the goods*] as much as she can stow and carry in her above her victuals tackle and apparel and receive and discharge the same from aboard her at L. within the respective times before limited and will also truly pay or cause to be paid unto the said A. B. his executors administrators or assigns freight (*d*) for every ton of which shall be laden on board the said ship at L. and delivered to the said C. D. his executors &c. at as aforesaid and after the rate of £ sterling per ton for every ton of and proportionably (*e*) for every lesser quantity than a ton accounting 20 cwt. neat thereof one half part within days after a right discharge and delivery thereof as aforesaid and the other half part within months next after such discharge with per ton primage and will also pay average as accustomed together with the third part of all port charges to grow due during the said voyage and it is agreed that what goods the said C. D. shall load outwards are to be carried freight free (*f*) *In witness &c.*

No.
DCXXXIX.
Charter-Party.
To discharge
cargo.

Covenants from
freighter.

To procure
cargo.

To pay freight.

(*a*) As to exceptions, see BILL OF LADING, *ante*, p. 1481.

(*b*) Or, "And the said C. D. E. F. &c. do and each of them for himself &c. severally and respectively and not jointly nor one for the other nor for the others' acts &c. doth covenant with &c. the said A. B. that each of them the said C. D. E. F. his factors executors or assigns will unload his outward goods and fully load the ship at L. his said part of the said ship's tonnage to him letten."

(*c*) As to the force of these words, see Pref. sect. 7.

(*d*) Or, "for every ton of for each of the parts or shares of the said ship's tonnage to them letten."

(*e*) As to the propriety of these words, see Pref. sect. 4.

(*f*) If it be necessary, add, "And it is hereby agreed that the said C. D. shall be allowed lay or working days in the whole for loading or unloading the said outward and homeward bound cargoes to commence and be

No. DCXL.

No. DCXL.

Charter-Party.*Memorandum for Charter.*London [*or other place*] day of 185

It is this day mutually agreed between (*master or owner*) of the good ship or vessel called the of the measurement of tons or thereabouts now lying in the port of and (*merchant*) of &c. merchant That the said ship being tight stanch and strong and every way fitted for the voyage shall with all convenient speed (*a*) sail and proceed to or so near thereto as she can safely get for the purpose of loading from the factors of the said merchant a full and complete cargo of which the said merchant binds himself to ship not exceeding what she can reasonably stow and carry over and above her tackle apparel provisions and furniture and being so loaded shall therewith proceed to the port of or so near

computed from and exclusive of the days after the said A. B. shall be ready to take in and discharge his respective cargoes and notice given thereof to the said C. D. his agents correspondents or assigns and that it shall be lawful for the said C. D. or his agents &c. to keep and detain the said ship or vessel on demurrage for the space of working days over and above the before-mentioned working or lay days upon paying the said A. B. his executors and administrators at the rate of £ per day for each and every of the said days of demurrage (see *ante*, Pref. sect. 8). *And* it is hereby further mutually agreed and declared by and between the said parties that the said freighter shall be at liberty to place and send on board the said vessel a supercargo during the said voyage for whose passage the said A. B. shall make no charge whatsoever the said supercargo however finding and providing himself with all necessaries during the said voyage *And* for the due performance of all and singular the covenants conditions and agreements herein contained the said parties mutually bind themselves their executors and administrators in the penal sum of £ firmly by these presents to be forfeited and paid by the party delinquent to the party observant to the true and punctual performance thereof [*or* "especial the said A. B. the said ship her tackle and appurtenances and the said C. D. the goods and merchandizes to be laden and put on board the said vessel on the said voyage each unto the other of them in the penal sum &c."'] As to the efficacy of the penal clause generally, see AGREEMENTS, Pref. sect. 9; and as to the inefficacy of the last clause, see CHARTER-PARTIES, Pref. sect. 9.

(*a*) The stipulations in a charter-party that the vessel being tight, stanch, and strong shall sail with all convenient speed, are not conditions precedent to the charterer's obligation to load, unless by the breach of such stipulations the object of the voyage is wholly frustrated, *Tarrabochia v. Hickie*, 1 H. & N. 183.

thereunto as she may safely get and deliver the same on being paid freight the sum of £ (restraint of princes and rulers the act of God the Queen's enemies fire and all and every other dangers and accidents of the seas rivers and navigation of whatever nature and kind soever during the said voyage always excepted) The freight to be paid on unloading and right delivery of the cargo running days are to be allowed the said merchant (if the ship is not sooner dispatched) for loading the said ship at and days on demurrage over and above the said laying days at £ per day Penalty for non-performance of this agreement on either side to be £ sterling.

No. DCXL.
Charter-Party.

No. DCXLI.

An Hypothecation of a Ship and Cargo.

No. DCXLI.
Hypothecation.

Obs. Hypothecation is the pledging a ship for necessities in case of distress, which, by our maritime law, may be done by the master, factor, purser, or any reputed owner, and the contract will be binding on the owner. Any pledging a ship under other circumstances is done by a bill of sale, see *ante*, **BILLS OF SALE OF SHIPS**, p. 1468.

Know all Men to whom this instrument of bond and bill of maritime risk and bottomry may come that in the year of the birth of our Lord Jesus Christ 18 on the day of in the city of in my office personally appeared (*master*) master of the ship whom I know to be the real person and he declared to me the notary in the presence of the witnesses herein-after mentioned that within hours after the arrival of his said ship at or any other port and previous to beginning to make any delivery of the cargo at the port aforesaid or any other port that he the master or whosoever may act in lieu of him or in case of his absence perform the duties of his said quality shall and will pay by this bill of sea risk exchange and bottomry to (*lender*) &c. professed in the order of Christ or to his order the sum of £ sterling principal and premium of risk and sea exchange at the rate &c. the which principal he acknowledged to have received of the said (*lender*) in the good current money of this realm under the denomination of true and legitimate money of sea exchange and bottomry on the hull keel and ap-

No. DCXLI.
Hypothecation.

purtenances of the aforesaid ship and therewith to supply the wants of the repairs calking and of the cargo of the same on which he had effectively invested it the said (*L.*) taking upon himself and in consideration of the aforesaid premium of £ per cent. voluntarily agreed and settled between them to run the sea risk on the said hull keel and appurtenances and cargo of the said ship in her ensuing voyage which the said master is about prosecuting from this port of to that of these being the risks which the aforesaid (*L.*) takes upon himself and is to run such as of the sea winds fire stranding and ship wreck enemies and false friends detentions of princes and reprisals during the whole of the said voyage excepting nevertheless those of barratry of the master and of average as well particular as general the which are expressly excluded the which risk shall commence to run from the hour the ship shall leave her first anchor to set sail from this port to that of and shall cease in twenty-four hours after having come to an anchor And for the ready payment of the aforesaid sum of £ he the master binds himself and his effects in general dues and funds both in actual possession and future and by special mortgage the cargo freights due or that may become due and in case of failure of the prompt payment in due time he binds himself under this clause of mortgage to pay to him or his order for all the delay until full payment at and after the rate of £ per cent. per annum and there being also present (*mate*) mate of the said ship by whom it was declared that in case of the absence of the aforesaid master he bound himself to fulfil the contents of this bond they thus executed and accepted after these presents being read to them and I (*notary*) in the name of whomsoever it may concern being absent to all which were witnesses present (*interpreter*) who also acted as interpreter as well for the master as for the mate he being then vice-consul and (*L.*) who together with the parties signed thereto (*N.*) the notary wrote it (*presentees*) and (*N.*) notary public of notes in the city of and district of her Majesty our lady whom God preserve caused this instrument to be transcribed from my books of notes to which I refer myself and subscribed it and sign it in public form.

(*interpreter*)
(*lender*)
(*presentees*)

{ In testimony of the truth (*notary*)
whose handwriting is certified by
(*vice-consul*).



No. DCXLII.

Owner's Notice of Abandonment of Goods to Underwriter.

No. DCXLII.

Abandonment.

Sir

Whereas by a policy of insurance dated the &c. and subscribed by you you did insure the sum of £ on goods on board of the ship *Carolina* from to and against the risks therein mentioned *And whereas* during the said voyage the said ship with the said goods thereof struck on a rock and was with difficulty got to the side of a wharf at or near where she now lies full of water and the said goods being therein have been and are thereby wetted damaged and spoiled and the said voyage is thereby lost and a total loss of the said goods has arisen *Now therefore* I the owner of the said goods whose name is hereunto subscribed do hereby give you notice of the said loss received from Messrs. dated &c. And I do hereby give you notice that I do hereby abandon and resign to you and the other underwriters upon the said policy the said goods so insured as aforesaid and all profit benefit and advantage whatsoever which may arise from the same And I do hereby give you notice that I am ready and willing to execute and deliver my power of attorney or authority enabling you to demand recover and receive any proceeds to arise from the said goods And I do hereby require you to pay the amount of your subscription on the said policy a total loss of the said goods having arisen and happened within the true intent and meaning of the said policy Dated the day of .

Signed (owner).

SURRENDERS.

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| 1. <i>Definition.</i>
<i>Operative Words.</i>
2. <i>Two Kinds of Surrenders.</i>
<i>Surrenders must be made in Writing.</i>
3. <i>What not a Surrender of a Lease.</i> | 4. <i>Must be by deed, when.</i>
5. <i>Who may Surrender.</i>
6. <i>What may be surrendered.</i>
7. <i>What is necessary to a Surrender.</i>
8. <i>Stamp.</i> |
|--|---|



Definition.

SECT. 1. A surrender is the yielding up, or returning, or relinquishing of a smaller estate to him who has a greater estate in the same land in remainder, or immediately expectant upon such smaller estate, Shep. Touch. 300. Where a surrender is made to a person in remainder, and another party has an intervening estate, it will operate as a grant, and eventually by the determination of the mesne estate, the first estate may merge in the third estate. The most proper words whereby to make a surrender are, "surrender and yield up," Shep. Prec. 61; but it may be made without any particular form of words. The word "release" will operate as a surrender. In surrenders of terms of years the word "assign" is generally used in addition to the word "surrender," that in case there be any impediment to the operation of the deed as a surrender, the deed may have effect as an assignment, Watk. Princ. Conv. by Prest. 226.

Operative words.

Two kinds of surrenders.

Surrenders must be made in writing.

What not a surrender of a lease.

Must be by deed, when.

2. Surrenders are of two kinds, surrenders at common law, and surrenders by custom or of customary estates [see MORTGAGES (*Copyholds*), pp. 1168, 1169, and PURCHASE DEEDS (*Copyholds*), pp. 1280—1284. By the Statute of Frauds, no lands not being copyhold or customary shall be surrendered, unless it be by deed or note in writing, signed by the party surrendering the same, or his agent duly authorized.

3. The merely cancelling a lease is not a surrender within the Statute of Frauds, *Farmer v. Rogers*, 2 Wils. 27; neither is a recital, in a second lease, granted in consideration of such surrender within that statute, which requires it to be done by a note in writing, and consequently the prior lease may be set up by a tenant in bar of an ejectment by a remainderman.

4. An assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of any interest in any tenements or hereditaments, and not being an interest which might have been created without writing, made after 1st October, 1845, is void at law, unless made by deed, 8 & 9 Vict. c. 106, s. 3.

5. All persons capable of alienating lands may surrender any particular estate therein; also by the stat. 29 Geo. 2, c. 31, amended by the 11 Geo. 4 & 1 Will. 4, c. 65, infants by their guardians, lunatics by their committees, and *femes covert* by their attornies, may surrender leases for the purposes of renewal. The committees of lunatics may surrender leases and accept renewals, 16 & 17 Vict. c. 70, s. 113, and may accept surrenders of leases, and make new leases of lunatics' lands, *Ib.* s. 134.

Surrenders.

Who may surrender.

6. Any kind of estate for life may be surrendered, but not an estate in fee-simple or fee-tail; so likewise surrenders may not be made of rights or titles of estate for life or years, but it must be of the possession itself, *Shep. Touch.* 309. One termor for years may surrender to another termor for years, and such surrender will be good, although the surrenderee has a term for fewer years than the term of the surrenderor, *Hughes v. Robotham*, Cro. Eliz. 302; 3 Prest. Conv. 193; *Stephens v. Bridges*, 6 Madd. 66.

What may be surrendered.

7. To make a surrender good, the person who surrenders must be in possession, and he to whom the surrender is made must have a greater estate immediately in reversion or remainder in which the estate surrendered may merge, *Shep. Touch.* 309; 2 Roll. Abr. 494; and the surrender cannot be made, if the reversion or remainder be not immediate, *Plowd.* 541; *Skinn.* 263. Livery of seisin is not necessary, because there is already a possession.

What is necessary to a surrender.

8. A surrender when made upon the sale or mortgage of lands requires an *ad valorem* stamp, see *ante*, pp. 879, 1126. A surrender not otherwise charged in the Schedule, Part I., 55 Geo. 3, c. 184, nor expressly exempted from all stamp duty, of any term or terms of years, or of any freehold or uncertain interest in any lands or hereditaments not being of copyhold or customary tenure, requires a 1*l.* 15*s.* stamp, and where the same contains 2160 words or upwards, a progressive duty of 10*s.* for every entire quantity of 1080 words over and above the first 1080 words, *ante*, p. 887.

Stamp.



No. DCXLIV.

No. DCXLIV.

*Surrender out of Court of Copyhold Estate to a Purchaser (a).**Copyhold Estate
to a Purchaser.*

The manor of } *Be it remembered* That on the
 in the county of } day of A. B. of &c. (*vend*)
 came before me C. D. of &c. (steward of the said manor) *And*
 in consideration of the sum of £ of lawful money of Great
 Britain to the (V.) paid by the (*purchaser*) of &c. the receipt of
 which said sum of £ the said (V.) doth hereby acknow-
 ledge the said (V.) did out of court surrender out of his hands
 into the hands of the lord of the said manor by the hands and
 acceptance of me his said steward by the rod according to the
 custom of the same manor *All* &c. [*here describe the copyhold*
parcels] Together with all and singular fences hedges ditches
 ways watercourses rights and appurtenances whatsoever to the
 same premises belonging or appertaining (to which said pre-
 mises amongst others the said (V.) was admitted tenant at a
 general court held for the said manor on the day of
 185 under the will of &c. *And* the reversion and reversions
 remainder and remainders yearly and other rents issues and
 profits thereof *And* all the estate right title interest pro-
 perty possibility claim and demand whatsoever of him the said
 (V.) therein or thereto To the use of the said (P.) his heirs and
 assigns for ever at the will of the lord according to the custom
 of the said manor at and under the suits services rents fines and
 heriots therefore due and of right accustomed.

(Signed) A. B.

This surrender was taken and accepted the
 day and year above written by me

C. D. (*steward*)
 steward of the said manor.

*Surrender out of Court of Copyholds by Tenant in Tail in
 Remainder with Protector's Consent to acquire Reversionary
 Estate in Fee, see No. CCCXC., ante, p. 929.*

(a) See *ante*, pp. 1280—1284.

Surrender of Copyholds out of Court by Tenant in Tail in Remainder to acquire base Fee, see No. CCCXCI., ante, p. 930.

Conditional Surrender out of Court of Copyholds to Use of Mortgagee, see No. CCCCLXIV., ante, p. 1169.

No. DCXLV.

No. DCXLV.
Life Estate.

Surrender of a Life Estate.

This Indenture made &c. Between (surrenderor) of &c. of the one part and (surrenderee) of &c. of the other part Whereas [recite the will or deed creating the life estate] Now this Indenture witnesseth That for divers good causes and considerations him the said (surrenderor) hereunto moving he the said (surrenderor) Doth hereby surrender and yield up unto the said (surrenderee) his heirs and assigns All &c. which was limited by the said in part recited indenture of &c. to the use of the said (surrenderor) during the life of him the said (surrenderor) and every part and parcel of the same with their and every of their rights members and appurtenances and the reversion &c. And all the estate &c. To the intent and purpose that the estate for life or life interest of him the said (surrenderor) may merge and be absolutely extinguished And the said (surrenderor) doth hereby for himself his heirs executors and administrators covenant with the said (surrenderee) his heirs and assigns that he the said (surrenderor) hath not made done or executed or been party or privy to any act deed matter or thing whereby or by reason or means whereof he the said (surrenderor) is in any manner prevented from surrendering the premises hereby surrendered or intended so to be or any of them or any part thereof in manner aforesaid [or whereby &c. he has incumbered] In witness &c.

No. DCXLVI.

Surrender of a Lease for Lives.

No. DCXLVI.

Lease for Lives.

This Indenture made &c. Between &c. [recite a lease from the said A. B. &c. to the said C. D. to hold to him for the lives of A. B. and two nominees] And whereas the said (nominees) have lately departed this life leaving the said A. B. them surviving and the said A. B. is now desirous of having a new lease of the hereditaments and premises to him granted for and during the lives hereinafter named Now this Indenture witnesseth That in consideration of £ paid by the said C. D. to the said A. B. the receipt &c. he the said A. B. Doth hereby surrender and yield up unto the said C. D. his heirs and assigns All &c. And all the estate &c. to the intent and purpose that the said C. D. may be enabled to grant a new lease of the said prebend lands &c. for and during the lives of such three persons as shall be nominated by the said A. B. And the said A. B. doth hereby give up the said in part recited indenture of lease to be cancelled (see Sect. 3) In witness &c.

No. DCXLVII.

Surrender by Indorsement of a Mortgage Term to merge in the Inheritance.

No. DCXLVII.

Mortgage Term to merge.

This Indenture made &c. Between the within named (mortgagee) of the first part the within named (owner) of the second part and the within named (trustee) of the third part Whereas all interest which hath accrued since the date of the within written indenture in respect of the principal sum of £ secured to the said (M.) upon mortgage of the term of 500 years limited to him by the within recited indenture of grant of the day of hath been duly paid and satisfied by the said (O.) up to the day of the date of these presents as he the said (M.) doth hereby admit and acknowledge And whereas the said (O.) hath proposed to pay off and discharge the said principal sum of £ and hath requested the said (M.) upon such payment to surrender the unexpired residue of the said mortgage term of 500 years to the said (O.) and the said (T.)

Recital that interest was paid.

Agreement of owner to discharge mortgage.

No. DCXLVII as his trustee *Now this Indenture witnesseth* That in compliance with the request and in consideration of the sum of £ of lawful money of Great Britain to the said (*M.*) in hand paid by the said (*O.*) in full satisfaction and discharge of the said principal sum of £ secured to the said (*M.*) by the within recited indenture of the day of the receipt and payment of which said sum of £ he the said (*M.*) doth hereby admit and acknowledge *And* from the same and every part thereof doth acquit release and discharge the said (*O.*) his heirs executors administrators and assigns and every of them for ever by these presents He the said (*M.*) at the request and by the direction of the said (*O.*) and upon the joint acceptance of himself and the said (*T.*) testified by their respectively executing these presents *Doth* by these presents bargain sell assign release surrender and yield up unto the said (*O.*) and (*T.*) their heirs and assigns *All* that the within mentioned messuages and all those the several freehold pieces or parcels of land situate in the parishes of or one of them *And* all and singular other the freehold tenements and hereditaments in and by the within written indenture conveyed and assured or expressed and intended so to be or such and so many of the same lands and hereditaments as were in and by the said indenture of grant of the day of limited in use to the said (*M.*) for the said term of 500 years with their and every of their rights members and appurtenances *And* all the estate right title interest term and terms of years now to come and unexpired charge lien property claim and demand whatsoever both at law and in equity of him the said (*M.*) of in to or out of the same hereditaments and premises hereby assigned and surrendered or intended so to be or any of them or any part or parcel thereof *To* the end and intent that the said messuage and freehold pieces or parcels of land and other hereditaments may henceforth be freed and absolutely discharged from the said principal sum of £ and all interest and other claims and demands on account thereof *And* to the further end and intent that the said term of 500 years or the unexpired residue thereof and such other term or interest (if any) as is now vested in the said (*M.*) may upon the execution of these presents be merged and extinguished in the immediate reversion freehold and inheritance of the said messuages pieces or parcels of land and other hereditaments hereby assigned and surrendered or intended so to be [*Covenant against incumbrances by M.*] *In witness &c.*

Mortgage Term
to merge.

Mortgagor
assigns and
surrenders.

To intent to
discharge mort-
gage.

And to merge
term.

WARRANTS OF ATTORNEY.

(See *ante*, p. 899, and as to the Stamp, see *ante*, pp. 894, 895.)



Warrant of Attorney to enter up Judgment, with Defeasance indorsed thereon, see No. CCCLXXV., *ante*, pp. 900—902.



No. DCXLVIII.

No.
DCXLVIII.

Warrant to enter Satisfaction on a Conditional Surrender of Copyholds (a).

Warrant of Satisfaction.

Manor of in } I G. H. of &c. do hereby acknowledge
the county of } to have received of and from E. F. of
&c. all principal and interest monies due and owing to me upon
or by virtue of a conditional surrender made and passed by the
said E. F. of certain copyhold or customary hereditaments
lying within and holden of the said manor and dated the
day of 1850 And I do hereby direct and require the
steward of the said manor to enter satisfaction in respect of the
said conditional surrender on the court rolls of the said manor
and for so doing this shall be his sufficient warrant and autho-
rity Dated this day of 185

G. H.

(a) See *ante*, p. 1169.

WILLS.

1. *Definition of Will and Codicil.*
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or by destruction.
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a Fee Tail.

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12. *What Interests will pass by Wills.*

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A general Devise to include Copyholds and Leaseholds as well as Freeholds.

A general gift to include Estates over which Testator had general Power of Appointment.

SECT. 1. A will or testament has been defined to be the legal declaration of a party's intention, which he directs to be performed after his death, 2 Bl. Com. 499, 500. The words "will" and "testament," though frequently used indiscriminately, are not, strictly speaking, synonymous. A will relates properly to real estate; and a testament is confined to chattels requiring executors. A codicil is a supplement to a will or testament, or an addition made by a testator to his will, and of which it is considered as a part, being intended to alter or explain, or to make some addition to, or subtraction from, the former disposition of the testator. The word "will," in the Act 7 Will. 4 & 1 Vict. c. 26, extends to a codicil and to an appointment by will, or by writing in the nature of a will in exercise of a power, and to the appointment, under 12 Car. 2, c. 24, of a guardian, 7 Will. 4 & 1 Vict. c. 26, s. 1.

Definition of will and codicil.

It is of the essence of a will to be revocable; for the making of a will is but the inception of it, and it has no effect until the death of the testator. It is contrary to the nature of a will to be so absolute, that the testator, being of good and perfect memory, cannot countermand it, *Forse and Hembling's case*, 4 Rep. 61. If a man make his testament and last will irrevocably, yet he may revoke it; for his acts or his words cannot alter the law, to make that irrevocable, which of its own nature is revocable, *Vinyor's case*, 8 Rep. 81. And even where express clauses derogatory of the power of making future testaments, as, "I do from henceforth renounce the power of making any other testament," or the like are added, such testaments may be avoided by others of a later date, precisely as if they contained no such derogatory clauses; because the clause derogatory of the power of making testaments, is utterly void in law; nor can a man renounce the power or liberty of making testaments, which continues during his life, Swinb. p. 504. See 1 Addams, 278, 279, n.

Essence of a will to be revocable.

2. The Act 7 Will. 4 & 1 Vict. c. 26, does not extend to any will made before the 1st day of January, 1838, and every will re-

To what wills the Act 7 Will.

*What Wills
not within
Wills Act.*

4 & 1 Vict.

does not apply.

executed or republished, or revived by any codicil, is for the purposes of the Act deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and the Act does not extend to any estate *pur autre vie* of any person who died before the 1st January, 1838, 7 Will. 4 & 1 Vict. c. 26, s. 34.

The Act does not affect certain provisions of 11 Geo. 4 & 1 Will. 4, c. 20, with respect to the wills of petty officers and seamen and marines, 7 Will. 4 & 1 Vict. c. 26, s. 12. And any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the Act, *Ib.* s. 11.

All property
may be dis-
posed of by
will.

3. Every person may devise, bequeath, or dispose of, by his will executed in manner required by the Wills Act, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law, or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator, 7 Will. 4 & 1 Vict. c. 26, s. 3.

Real estate,
what.

The words "real estate" in the stat. 7 Will. 4 & 1 Vict. c. 26, extends to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest other than a chattel interest therein, 7 Will. 4 & 1 Vict. c. 26, s. 1.

Personal estate,
what.

The words "personal estate" extend to leasehold estates and chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein, 7 Will. 4 & 1 Vict. c. 26, s. 1.

Customary
freeholds and
copyholds
without sur-
render and be-
fore admit-
tance, &c.

The power thereby given extends to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if the Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in the Act, if the Act had not been made. The power extends to estates *pur autre vie*, whether there shall or shall

Estates *pur
autre vie*.

not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will, 7 Will. 4 & 1 Vict. c. 26, s. 3.

What may be disposed of by Will.

Contingent interests.

Rights of entry; and property acquired after execution of the will.

Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will, *Ib.* s. 24.

A will shall be construed to speak from testator's death.

This section relates only to the property comprised in the will, *Bullock v. Bennett*, 7 De G., M. & G. 283. See cases on this section, Shelford's Real Prop. Stat. pp. 497—500, 6th ed.

4. All persons generally, not under any legal disability, may make wills.

Of the capacity of persons to make wills.

An infant—that is, a person under the age of twenty-one years—could not devise his real estate, by virtue of the statute of 34 & 35 Hen. 8, c. 5, the 14th section of that Act having declared that the will of an infant should not be valid. Before the Act 7 Will. 4 & 1 Vict. c. 26, the power of testamentary disposition, with respect to *personal estate*, commenced in the case of males at the age of fourteen, and in the case of females at the age of twelve years, *Ex parte Holyland*, 11 Ves. 11; *Hyde v. Hyde*, Prec. Ch. 316; Harg. Co. Litt. 89 b, n. 6. An uniform rule as to the age at which wills may be made is now prescribed by that Act, extending to both real and personal estate, it having been enacted (s. 7), “that no will made by any person under the age of twenty-one years shall be valid.”

Infants.

The Act 7 Will. 4 & 1 Vict. c. 26, s. 8, provides, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of that Act. Married women having been excepted out of the statute 34 & 35 Hen. 8, c. 5, s. 14, were incapable of devising lands. But this disability was a creation of civil policy, and might be dispensed with at the pleasure of the parties.

Married women.

Where the intention is to give a married woman a power of disposing of real estate by will, two modes may be adopted. One is, by Powers of making wills of

Capacity to make Wills.
real estate may be reserved to married women.

vesting the legal estate in trustees, upon such trusts as she shall appoint by will, which enables her to dispose of the equitable interest ; the other is, by conveying the estate to such uses as the married woman shall appoint by will, under which power a disposition of the estate may be made even at law, *Peacock v. Monk*, 2 Ves. sen. 191 ; *Doe v. Staple*, 2 T. R. 695. Such a power may be reserved by articles before marriage, as where a woman being entitled to the trust of a reversion in fee of lands by articles previous to her marriage, reserved to herself a power of disposition by deed or will, as she should think proper, an appointment by will made by her in favour of her husband and children, was held to be binding on her heir-at-law, although no actual conveyance in pursuance of the articles had been executed, *Wright v. Cadogan*, 2 Eden, 239 ; Ambl. 468. But a mere contract by the wife to convey, entered into after marriage, whether for her own benefit or that of others, would be void, *Dillon v. Grace*, 2 Sch. & Lef. 462. See *Worrall v. Jacob*, 3 Mer. 256. So that, after marriage, there must be an actual conveyance of her lands by her and her husband, in the manner required by 3 & 4 Will. 4, c. 74, for passing the estates of a married woman, in order to confer on her the power of disposition by will. A bond given previously to marriage by the intended husband, with a condition empowering the wife to dispose of her freehold estate by deed or will, notwithstanding her coverture, is binding, and the court will compel the heir-at-law to convey to the devisee taking under a will made by such married woman, *Rippon v. Dawding*, Ambl. 565, and note by Blunt.

An express power as to real estate must be reserved.

In order to enable a married woman to make a disposition of real estate in fee-simple, an express power for the purpose must be reserved to her ; for where the whole legal or equitable fee is given to a married woman, although it is declared that she shall enjoy the estate for her sole and separate use, a power of disposition by will is not incident. Where lands were devised to a trustee and his heirs in trust, for the separate use of a married woman, and to convey the same to her, her heirs and assigns, free from the control of her present or any future husband, and to permit her to take the rents and profits ; it was held, that she had no power of devising the premises, for the legal estate was vested in the trustee for securing her against her husband's rights, with the beneficial interest in fee in her, without the incidental power of devising ; and upon her death the trustee became seised for her heir-at-law, *Doe d. Stevens v. Scott*, 1 Moore & P. 317 ; 4 Bing. 505 ; see *Goodill v. Brigham*, 1 Bos. & P. 192.

Copyholds.

A married woman may dispose of copyholds by will, where there has been a previous surrender to such uses as she shall appoint by will, *Drever v. Thompson*, 4 Taunt. 292 ; *Doe d. Nethercote v. Bartle*, 5 B. & Ald. 492, see *ante*, p. 1502. A surrender of copyholds to the use of a will made by a woman before marriage is sus-

pended by it, so as to disable her to make an appointment by will during coverture, *George d. Thornbury v. Jew*, Ambl. 627.

Capacity to make Wills.

A woman, whose husband has been banished for life by Act of Parliament, may dispose by will of her real and personal estate; for as he is civilly dead she is restored to the rights and privileges of discovery, *Countess of Portland v. Prodger*, 2 Vern. 104; 1 Salk. 116; 3 P. Wms. 37; Co. Litt. 133 a. Transportation for life amounted to a total extinguishment of marital and civil rights, *Ex parte Franks*, 1 Moore & Scott, 1; 7 Bing. 762. It seems, therefore, to follow, that a will made by a married woman during the suspension of the civil rights of her husband, as in the case of a transportation for seven or fourteen years will be valid, *De Gaillon v. L'Aigle*, 2 W. Bl. 1081. See *Marsh v. Hutchinson*, 2 Bos. & P. 232; 9 Geo. 4, c. 32, s. 3; 2 & 3 Will. 4, c. 62, s. 2.

Wife of an exile.

A married woman is, generally speaking, incapable of making a testament of chattels without the license of her husband, for all her personal chattels are absolutely his, and he may dispose of her chattels real, or shall have them to himself if he survives her; it would be, therefore, extremely inconsistent to give her a power of defeating that provision of the law by bequeathing those chattels to another, 4 Co. Rep. 51; 2 Bl. Comm. 498. Since the husband has no beneficial interest in the personal estate which the wife takes in the character of executrix, and as the law permits her to take upon herself that office, it enables her, in exception to the general rule that a married woman cannot dispose of property, to make a will in this instance, without the consent of her husband, of such articles as she is entitled to as executrix, so as to continue the right of representation to the testator or prior owner as to such of his personal assets as remain outstanding, but not as to any beneficial interest which the wife may have in any part of them, 15 Ves. 156; see *Hodsdon v. Lloyd*, 2 Bro. C. C. 534.

Wills of personal estate.

As the husband may waive the interest which the law gives him, he may empower the wife to make a will disposing of her personal estate. Thus, a husband may assent to his wife's will, and such assent entitles the wife's executor to claim such articles of her personal estate which would have been her husband's as administrator, 1 Roper on Husband and Wife, 170, 2nd ed. In order to establish the will, a general assent that the wife may make a will is not sufficient; it should be shown that he has consented to the particular will which she has made, *King v. Bottesworth*, 2 Str. 91, and his consent should be given when it is proved, *Henley v. Phillips*, 2 Atk. 49. He may therefore revoke his consent at any time during his wife's life, or after her death before probate, Swinburn on Wills, Part II., Sect. 8, fol. 10; 4 Burn's Eccl. Law, 52; *Anon.* 1 Mod. 211. When the will is made in pursuance of an express agreement or consent, it is said that a little proof will be sufficient to make out the continuance of that

Of the husband's assent to his wife's will.

Capacity to make Wills.

consent after her death, *Brook v. Turner*, 2 Mod. 170. This assent on the part of the husband is no more than a waiver of his rights as his wife's administrator. It therefore can only give validity to the instrument in the event of his being the survivor. Hence it follows, that if he die before his wife, her will is void against her next of kin, so far as it derived its effect from his consent, and it therefore does not pass the right to property bequeathed to her during the coverture, *Stevens v. Bagwell*, 15 Ves. 156.

Personal estate
settled to se-
parate use of
wife.

A power of disposition by will is incident to personal estate settled to the separate use of a married woman, *Peacock v. Monk*, 2 Ves. sen. 190. This power extends also to the savings out of such personal estate, whether derived, *Fettiplace v. Gorges*, 1 Ves. jun. 46, from her husband or a third person. And where the gift is for the separate use of the wife, and continued so until transferred to the husband, such transfer will not destroy the separate trust, unless clear evidence is produced that it was intended, with her assent, to destroy it; for the husband may be a trustee for the separate use of his wife, *Rich v. Cockell*, 9 Ves. 369. If a woman saves money out of her pin-money, or separate maintenance, she may dispose of such money, or of any jewels, &c. bought with it, by writing in the nature of a will, if she dies before her husband, and shall have it herself if she survives him; and such money, jewels, &c. shall not be liable to her husband's debts, *Herbert v. Herbert*, Prec. in Ch. 44. A married woman who possesses *separate* property may dispose of such property by will, independent of her husband, and just as if she were a *feme sole*, whether such property be vested in the hands of trustees to her separate use or not, *Braham v. Burchell*, 3 Addams, 263. In case of judicial separation, the wife is to be considered a *feme sole* with respect to property which she may acquire, and such property may be disposed of by her in all respects as a *feme sole*, 20 & 21 Vict. c. 85, s. 25. See also s. 21.

Lunatics, idiots
and persons of
unsound mind.

Idiots, lunatics, and persons of unsound mind, are incapable of making wills of real or personal estate by common law. It is impossible to define, with any degree of certainty, the quantum of intellect which will suffice for enabling a person to dispose of his property by will; cases of this sort depend so much upon the circumstances of each particular case. The will of an idiot is clearly void. It is observed by Sir *Edward Coke*, it is not sufficient that the testator have a memory, when he makes his will, to answer familiar and usual questions, but he ought to have a disposing memory, so that he is able to make a disposition of his lands with understanding and reason, and that is such a memory as the law calls sane and perfect, *Marquis of Winchester's case*, 6 Rep. 23. See *Combe's case*, Moore's Rep. 759; Vin. Abr. Devise (A), pl. 22. It has been observed, that it is a great but uncommon error to suppose that,

because a person can understand a question put to him, and can give a rational answer to such question, he is of perfect sound mind, and is capable of making a will for any purpose whatever; whereas the rule of law, and it is the rule of common sense, is far otherwise; the competency of mind must be judged of by the nature of the act to be done, and from a consideration of all the circumstances of the case, per Sir *J. Nicholl*, 2 Hagg. Eccl. R. 122. If a man in his old age becomes a very child again, and is so forgetful that he has forgotten his own name, he cannot make a will; but the infirmities of old age which do not take away the use of reason, do not hinder him in that condition from making a will, Swinb. Part II. s. 1; 6 Rep. 23. Weakness of mind and forgetfulness are not sufficient to invalidate a will if it is proved that the mind of the testator was, when called to exertion, capable of attention and application, *Tufnell v. Constable*, 3 Knapp, 122; 4 Hagg. Eccl. R. 465. A will made by a man when of sound mind, but who afterwards becomes of unsound mind, cannot be revoked during the continuance of his disorder, but the loss of intellect after making a will is not of itself a revocation, 4 Rep. 61 a; 2 Br. C. C. 540. See Shelford on Lunatics, pp. 360—437, 2nd ed.

*Capacity to
make Wills.*

The presumption that every man is sane unless the contrary is proved is not a presumption of law but a presumption of a fact, or at most a mixed presumption of *law and fact*. The competency of a testator is to be assumed until it is impeached by evidence, but it is not to be assumed as a matter of law that a will is valid as made by a competent testator, unless the court or jury who have to decide upon it are convinced that he was *competent*. Therefore, he who relies upon the will in opposition to the title of the heir-at-law, must prove that it is the will of a person of sound and disposing mind. Such proof having been given, if incompetency of the testator to make a will be alleged, it is incumbent on the party alleging it to prove it, *Sutton v. Sadler*, 3 C. B., N. S. 87.

Presumption as
to capacity.

Every person is presumed to be of sound mind until the contrary is proved; but where the testator is proved to have been habitually insane before the making of his will, the law presumes the continuance of the disorder, and imposes on the party setting up a will the obligation of showing that it was executed during a lucid interval, *Groom v. Thomas*, 2 Hagg. Eccl. R. 433; *Cartwright v. Cartwright*, 1 Phill. R. 100; *Attorney-General v. Parnter*, 3 Br. C. C. 441; 1 Dow, 179; *White v. Wilson*, 13 Ves. 87. But although lunacy has been established against a party, it is not necessary, in support of his subsequent acts, to prove a restoration to as perfect a state of mind as he had previously enjoyed, *Ex parte Holyland*, 11 Ves. 11. For the question in these cases is, not whether the party has ever been insane, but whether he has been restored to such a degree of mental capacity as to be capable of performing the act in question, 5 Dow, P. C. 236.

*Capacity to
make Wills.*Traitors, felons,
&c.

A traitor attainted from the time of the treason committed can make no will of his lands or goods, for they are forfeited to the crown; but after a pardon from the crown, he is as competent to make a will of his lands and goods as any other person, *Shep. Touch.* 403; *Swinb. Part II.*, s. 12; 5 & 6 *Edw. 6*, c. 11, s. 9. Felons are equally incapable of making wills of lands to the prejudice of the lord claiming by escheat or forfeiture. The competency of an *attainted* felon to hold lands may be restored by the performance of the condition annexed to a pardon from the crown, *Doe d. Evans v. Evans*, 5 B. & C. 584; see also *Rex v. Haddenham*, 15 East, 463; 6 *Geo. 4*, c. 25, s. 1; and in felonies not capital, by enduring the punishment adjudged for his offence, 9 *Geo. 4*, c. 32, s. 3.

A copyholder, on his attainder for treason or felony, generally forfeits his copyhold to the lord of the manor, *Hawk. P. C. b. 2*, c. 49, s. 7; *Watk. Cop.* 325. But a copyhold of inheritance is not forfeited by conviction of felony without attainder, unless there be a special custom in the manor to that effect, *Rex v. Willes*, 3 B. & Ald. 510.

A felon of every description may devise lands held in gavelkind, for lands of that tenure are not forfeited by felony, 2 *Bl. Comm.* 84; 4 *Bl. Comm.* 386.

Personal prop-
erty.

Felons are incapable of disposing by will of their personal property (which, of course, includes leases for years and other chattel interests in lands), which is forfeited to the crown on *conviction*, and vested in the crown before office found, *Bac. Abr. Forfeiture (B.)*; *Bullock v. Dodds*, 2 B. & Ald. 258. And the forfeiture extends to property not belonging to the felon at the time of his conviction, but accruing due to him afterwards, before his term of transportation has expired, *Roberts v. Walker*, 1 *Russ. & M.* 752. But as the goods which a felon has, as the executor of another, are not forfeited, he may make a will of them, 4 *Burn's Eccl. Law*, 61; see 13 & 14 *Vict. c. 60*, ss. 46, 47; 15 & 16 *Vict. c. 55*, s. 8.

Felo de se.

The will of a *felo de se* is inoperative, so far as respects his goods and chattels, for they are forfeited to the crown by the act and manner of his death; but a devise of his real estate will be effectual, for of them no forfeiture is incurred, *Plowd.* 261; 4 *Bl. Comm.* 386; 3 *Inst.* 55; *Shep. Touch.* 404.

Outlaws.

Outlaws also, though merely in civil cases, are incapable of making wills of their personal property during the continuance of the outlawry; for their goods and chattels are forfeited during that time, *Shep. Touch.* 404; *Rex v. Cooke*, *M'Clel. & Y.* 196; *God. Orph. Leg.* 38.

Aliens.

An alien with whose country we are at war, unless he has the queen's licence, express or implied, is incapable of making a will; but if he has such licence, he, as well as an alien friend, may bequeath his personal estate, *Vin. Abr. Devise (G.)*, pl. 17; 1 *Bl. Comm.* 372; 1

Lutw. 34. Neither of them can acquire any permanent interest in lands, and therefore cannot take a freehold estate in lands or tenements, either by purchase or descent, 1 Bl. Comm. 372. So aliens residing in a foreign land are incapable of taking a devise of lands, or an interest in lands, although they may take beneficially money or other personal estate, not consisting of chattels real, *Fourdrin v. Gowdey*, 3 Mylne & K. 396, 397; but see *Knight v. Duplessis*, 2 Ves. sen. 360; 1 Br. P. C. 415. As to aliens in the colonies, see *Donegani v. Donegani*, 3 Knapp, 63. An alien friend may hire or take leases of lands for twenty-one years, for residence or business, 7 & 8 Vict. c. 66, s. 5, *ante*, pp. 1023, 1363.

*Capacity to
make Wills.*

The capacity of an alien to take a freehold or other interest in real property was formerly given either by letters of denization or by Act of Parliament, to naturalize the party, see *Fish v. Klein*, 2 Mer. 431. But now aliens may become naturalized by pursuing the mode prescribed by the stat. 7 & 8 Vict. c. 66, ss. 6—11.

Estates tail and in *quasi* entail have never been devisable. Tenants in tail may dispose of their estates by any assurance not being a will, 3 & 4 Will. 4, c. 74, s. 40. Tenants in tail, in order to acquire a power of testamentary disposition, must take the necessary means for converting their estates into fee simple or absolute estates where that is practicable, or into base or determinable fees, see stat. 3 & 4 Will. 4, c. 74; Shelford's Real Prop. Statutes, 323—336, 6th ed. For it may be observed, that a person seised of a base fee has the same right to devise it as a person seised of a common fee simple, *Doe v. Finch*, 1 Nev. & Mann. 130; 3 Bulst. 184; 4 Real Prop. Rep. p. 23.

Tenants in tail
and quasi en-
tail.

Where real estate is limited to two or more persons and their heirs, or where a legacy or the residue of personal estate is given to two or more legatees, without any words of severance or distribution, such persons take as joint tenants, *Webster v. Webster*, 2 P. Wms. 347; *Cray v. Willis*, Ib. 529; *Campbell v. Campbell*, 4 Br. C. C. 431; *Swaine v. Burton*, 15 Ves. 371. An important incident to an estate in joint tenancy is the right of survivorship, the consequence of which is, that on the death of one of the joint tenants, without having severed the joint tenancy, his right does not go to his heir or personal representative, but accrues to the surviving joint tenant or joint tenants. The will of a joint tenant, to have any operation, must have been a severance of the jointure; but a will could not have that effect, because the doctrine of survivorship takes place before the will can operate, *Swift d. Neale v. Roberts*, 1 W. Bl. 477. It is said that, by the custom of London, a joint tenant may devise, Com. Dig. Devise (H. 7). A will made by a joint tenant was void both at common law and upon the Statute of Wills, 34 & 35 Hen. 8, c. 5, which gave a power of disposition by will to all persons having a *sole* estate or interest in fee simple, or seised in fee simple, in coparcenary, or in common in fee simple, 3 Burr. 1496. Although the Act 7 Will. 4

Joint tenants.

*Capacity to
make Wills.*

& 1 Vict. c. 26, is differently framed, there is nothing in it which will make a will operate as a severance of a joint estate, for the power to devise is confined to such estates as would, in default of a devise, devolve on the testator's representatives, *ante*, p. 1510. A joint tenant, therefore, cannot devise his share of the estate as against his co-tenants. In order to acquire that right, the joint tenancy must be severed and converted into a sole tenancy, or tenancy in common. A will made by a joint tenant had no operation under the old law, although he afterwards survived his companion, and died solely seised, *Shep. Touch. by Prest.* 414. So a will made by a joint tenant during the continuance of the joint tenancy was inoperative, even as to his share of the estate, notwithstanding a subsequent severance of the joint tenancy by a partition made after the time of making the will, and before his death, unless there was a republication of it after the partition, *Swift d. Neale v. Roberts*, 3 Burr. 1488; 1 W. Bl. 476. But, as under the Act 7 Will. 4 & 1 Vict. c. 26, a will may operate on property acquired after the execution of the will, and as the will as to the estates comprised in it is to speak at the testator's death, ss. 3, 24, (*ante*, p. 1511,) it will follow, that if a person who is joint tenant at the date of his will, has at the time of his death become solely seised, either by partition or by survivorship, and has by his will devised all his real estate, or used words sufficiently comprehensive to include the estate held in joint tenancy, that such interest of which he is solely seised at the time of his death will pass by the will, although made during the existence of the joint tenancy. See 1 Jarm. on Wills, p. 35, 2nd ed.

If one joint tenant of copyholds surrendered to the use of his will, and devised his share of the estate, the devisee would take, for his admittance related to the surrender, and from that time the joint tenancy was severed, *Porter v. Porter*, Cro. Jac. 100; Co. Litt. 59 b; *Allen v. Nash*, 1 Brownl. 127; 5 Burr. 2786; 4 Burr. 1961; *Gale v. Gale*, 2 Cox, 136. See *Edwards v. Champion*, 3 De G., M. & G. 202; 1 De G. & S. 75.

Who may or
may not be de-
visees.

Infants *en*
ventre sa mère.

Illegitimate
children.

5. A married woman may be the devisee of her husband, because the devise does not take effect until the death of her husband, 2 P. Wms. 258; 6 Cru. Dig. 24. A devise to an infant, including an infant *en ventre sa mère*, is good, *Gulliver v. Wickett*, 1 Wils. 105; *Lancashire v. Lancashire*, 5 T. R. 49. Insane persons are capable of taking by devise or bequest. So an illegitimate child may be the object of a devise, where he is described by his name of repute, *Cartwright v. Vandry*, 5 Ves. 530; *Hart v. Durand*, 3 Anst. 684; *Bentley v. Blizzard*, 4 Jur., N. S. 652. See 2 Jarm. on Wills, 181, *et seq.*, 2nd ed. It is settled, that a bequest cannot be made by a man to his future illegitimate children, for they can have acquired no title by repute; but it is not settled whether a gift can be made to the future illegitimate children of a woman. Illegitimate

children cannot take under a gift to a class of children unless it is clear that the legitimate children never could have taken under the gift, *Pratt v. Mathew*, 22 Beav. 328; see *Tugwell v. Scott*, 24 Beav. 144. As an illegitimate child can have no heirs but of his own body, and lands given to him in fee would escheat if he died intestate and without issue, it is usual either to devise to him in tail, or to limit the estate to him for life, with a power of appointment, with remainder over to some other person.

Who may be
Devises.

Corporations are disabled by various statutes from acquiring real estates without licence in mortmain.

Bodies corporate, though disabled by the 34 & 35 Hen. 8 from taking by devise, were held capable of taking for charitable uses before the 9 Geo. 2, c. 36, which makes all such devises void, except such as shall be made to the two Universities, and the colleges of Eton, Winchester and Westminster; and the 43 Geo. 3, c. 107, extends the exception to the Governors of Queen Anne's Bounty. There are other exceptions by various statutes. See Shelford on Charitable Uses, pp. 42, 240—263. The stat. 7 Will. 4 & 1 Vict. c. 26, has repealed the 34 & 35 Hen. 8, c. 1, and has not renewed the prohibition against corporations taking real estates by devise. At present, therefore, the law is, that every corporation which is empowered by licence in mortmain to take and hold real property at all, may take it by way of devise to the extent of its licence as well as by other means, but that no corporation without such licence can take real estate by devise any more than before the late Wills Act, Grant on Corp., 112, 113. See *Incorporated Society v. Richards*, 1 Dru. & War. 295—332; *Attorney-General v. Skinners' Company*, 5 Madd. 206; *Hopkinson v. Ellis*, 5 Beav. 34. Where real estate is devised upon trust to a corporation not licensed, or not empowered by Act of Parliament or charter to take lands in mortmain, the devise is, of course, void at law, and the estate descends to the heir charged with the trust (supposing that it is not illegal as being in favour of charity) in the same manner as where a devise to a trustee fails by the death of devisee in trust in the testator's lifetime, 1 Jarm. on Wills, p. 53, 2nd ed.

There is no restriction upon a testator bequeathing his *pure personal* estate to charitable purposes, provided it is to remain personalty, and not to be laid out in the acquisition of some interest in real estate.

Restriction on
gifts to chari-
ties.

By 9 Geo. 2, c. 36, no real estate, nor personal estate to be laid out in the purchase of real estate, can be given to *charitable uses*, except by deed executed a year before the donor's death, and enrolled in Chancery within six months after its execution. And the same Act makes void all gifts of real estate or of personal estate to be laid out in the purchase of lands or any interest therein to or in trust for any charitable uses made in any other manner than prescribed by the Act. This Act has been held to apply to almost every interest in lands as money due on mortgages in fee, *Attorney-General v. Meyrick*,

*Gifts to
Charities.*

2 Ves. sen. 44; for terms of years, *Attorney-General v. Caldwell*, Ambl. 635; and whether legal or equitable, *Waterhouse v. Holmes*, 2 Sim. 162; money due on mortgage of turnpike tolls, *Knapp v. Williams*, 4 Ves. 340; *Finch v. Squire*, 10 Ves. 41. Mortgages of the railway company's undertaking, tolls and rates, are within the Act, *Ashton v. Lord Langdale*, 15 Jur. 868; 20 Law J., Ch. 234. A legacy charged on real estate, or a legacy of money to arise from the sale of real estate, is void, *Curtis v. Hutton*, 14 Ves. 537; *Page v. Leapingwell*, 18 Ves. 463; *Trustees of British Museum v. White*, 2 Sim. & S. 595; *Currie v. Page*, 17 Ves. 462. The lien which a testator has upon land sold in his lifetime for the purchase money is an interest in land, and a gift of it void under the statute, *Harrison v. Harrison*, 1 Russ. & M. 71; see Shelford on Charitable Uses, pp. 138—164.

Money to be
laid out in pur-
chase of land.

A bequest of money to be laid out in the purchase of land is clearly void, even although the trustees have power to invest upon personal securities until a suitable purchase can be made, *Attorney-General v. Heartwell*, 2 Eden, 234; *Grieves v. Case*, 4 Br. C. C. 671; 1 Ves. jun. 548; *Pritchard v. Arbouin*, 3 Russ. 458; and a recommendation to trustees to purchase has been held to be mandatory, and therefore void, *Attorney-General v. Davies*, 9 Ves. 546; *Pilkington v. Boughey*, 12 Sim. 114. A bequest of pure personalty to an association for buying appropriate tithes and re-vesting them in the Church of England, is void under 9 Geo. 2, c. 36, notwithstanding the 6 & 7 Vict. c. 47, s. 25, and 13 & 14 Vict. c. 94, s. 23, *Denton v. Lord Manners*, 4 Jur., N. S. 724; 27 Law J., Ch. 623; see Shelford on Charitable Uses, pp. 168—188.

Option to in-
vest in land or
on personal
securities.

Where trustees have an option to invest either in land or upon government or personal security, the bequest will be valid, *Curtis v. Hutton*, 14 Ves. 537; *Edwards v. Hall*, 17 Jur. 593; 22 Law J., Ch. 1078; but the option must be clearly expressed, *Attorney-General v. Hodson*, 15 Sim. 146; *Baker v. Sutton*, 1 Keen, 224. Where a sum of money and not merely the income is given for establishing a school at a certain place, it will be void if coupled with an intention that a site should be obtained for the purpose, *Attorney-General v. Hull*, 9 Hare, 647; *Re Clancy*, 16 Beav. 295; *Longstaff v. Rennison*, 1 Drew. 28, 34; *Crumph v. Playfoot*, 4 Kay & J. 479. A testator devised a piece of land in N. and then declared his desire to erect and endow almshouses in N., and he empowered his trustees "so soon as land in N. shall have been legally dedicated to charitable uses" by some other person within twelve months after his decease, to pay to the trustees of the intended charity a sum of 60,000*l.* to be devoted to the purposes of the charity, but not to be applied to the purchase of lands for the same. It was held by the House of Lords, reversing the decision of Sir J. Romilly, M. R., that the above bequest was *not* void under

9 Geo. 2, c. 36, *Philpott v. Governors of St. George's Hospital*, 6 H. L. C. 338. Lord Wensleydale said, "It is perfectly clear that if a man directs money to be laid out in building, he impliedly authorizes the money to be laid out in the purchase of land, and if he says no more, that bequest will be void. But that inference may be repelled, if he directs that the money is not to be laid out in the purchase of land, but is to be laid out upon land already in mortmain; and also if he directs that the land shall be procured from any other person who will give it without any reward to himself, and dedicate it to the purpose of the charity," *Ib.* pp. 373, 374.

*Gifts to
Charities.*

A bequest of shares in public companies who hold lands for the purposes of or as incidental to their undertakings, is not now considered as savouring of realty, and will therefore be valid. Thus bequests to charities of shares in the London Gaslight and Coke Company, *Thompson v. Thompson*, 1 Coll. 381; and see *Sparling v. Parker*, 9 Beav. 450, in the London and East and West India Dock Companies; *Hilton v. Giraud*, 1 De G. & Sm. 183, dock and canal shares and bonds secured by an assignment of the rates (*Walker v. Milne*, 11 Beav. 507; *Re Langham's Will*, 1 Eq. Rep. 118) in joint stock banks (the assets of which were by deed to be deemed personal estate, and which consisted of freehold, copyhold and leasehold hereditaments), railway, canal, waterworks, and banking companies, of scrip shares in a projected company, *Ashton v. Lord Langdale*, 4 De G. & Sm. 402; *Myers v. Perigal*, 2 De G., M. & G. 599; and the policies of assurance, though the assets out of which they were made payable consisted partly of real estates, *Murch v. Attorney-General*, 5 Beav. 433, have been held good. See Tudor's L. C. Real Prop. 436. Shares in mining companies, conducted on the cost book principle, were held not to be within 9 Geo. 2, c. 36, the monies being vested in trustees for the purpose of the undertaking generally, and not in trust for the individual shareholders, and the interest of the shareholders being limited to the profits derived from working the mines, *Hayter v. Tucker*, 4 Kay & J. 243; 4 Jur., N. S. 257.

Shares in
public com-
panies.

A bequest of personal estate to a municipal corporation, to be applied by them in such manner and for such purposes as they should judge to be most for the benefit and ornament of the town, is not void under the Mortmain Act, *Mayor of Faversham v. Ryder*, 5 De G., M. & G. 350; 18 Jur. 587; 23 Law J., Ch. 905.

Aliens may take by a devise, but the lands will belong to the crown; they do not, however, vest in the crown until office found, 1 Pow. on Dev. c. 7; 1 Jarm. on Wills, p. 53, 2nd ed. A devise of real estates to trustees in trust for an alien is not void, and the court will enforce the execution of the trust for the benefit of the

Aliens.

Gift to Aliens.

Execution of wills.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

When signature to a will shall be deemed valid.

What signature to be inoperative.

Acknowledgment and attestation.

crown, *Barrow v. Wadkin*, 3 Jur., N. S. 679; 24 Beav. 1; see *Rittson v. Storeby*, 3 Sm. & G. 230.

6. No will is valid unless it shall be in writing and executed in manner after mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation is necessary, 7 Will. 4 & 1 Vict. c. 26, s. 9.

Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him, be deemed to be valid within the above section, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the acts shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made, 15 & 16 Vict. c. 24, s. 1.

A will was signed by a testator in a room from which a door led to another room in which the two witnesses who signed the will as attesting his signature did so at a desk. The door was wide open; and had either party shifted their position, they could have seen each other write their names, but not without. It appeared, that that was not done, and therefore the testator could not actually see them subscribe the will. It was held, that the will was not signed by the

witnesses in the presence of the testator, and that he therefore died intestate, *Norton v. Bazett*, 3 Jur., N. S. 1084, Prob. C.

Execution of Wills.

A will of an English lady drawn up by a notary in France was signed by her not at the end of the will itself, but at the end of a notarial minute, which immediately followed the will, detailing the circumstances and facts under which the will was made. It was held, that such a signature was a compliance with the 15 & 16 Vict. c. 24, *Page v. Donovan*, 3 Jur., N. S. 220, Prob. C.

No appointment made by will, in exercise of any power, is valid, unless the same be executed in manner required by the Act, and every will so executed, so far as respects the execution and attestation thereof, will be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity, 7 Will. 4 & 1 Vict. c. 26, s. 10.

Appointments by will to be executed like other wills.

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid, *Ib.* s. 14.

Will not to be void on account of incompetency of attesting witness.

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment, mentioned in such will, *Ib.* s. 15.

Gifts to an attesting witness to be void.

In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof, *Ib.* s. 16.

Creditor attesting to be admitted a witness.

No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof, *Ib.* s. 17.

Executor to be admitted a witness.

7. Publication before the Act was another requisite to the validity of a will; that is, the testator was to do some act from which it might be concluded that he intended the instrument to operate as

Publication of wills.

Publication of Wills.

his will. But now every will executed in the manner required by the Act is valid without any other publication thereof, 7 Will. 4 & 1 Vict. c. 26, s. 13.

After-acquired property.

If a man devised all his lands in A., and afterwards purchased other lands there, they would not pass by the will, although it might contain the words "all the lands of which he may die seised at the time of his death;" but if he made a new publication of his will, it was sufficient to pass them; and personal estate purchased afterwards would pass without a republication; but now, by sect. 3 of 7 Will. 4 & 1 Vict. c. 26, property acquired after the execution of the will may pass by it, see sect. 24; *ante*, p. 1511; *O'Toole v. Browne*, 3 Ell. & Bl. 572.

Revocation of wills.

By marriage.

8. Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions), 7 Will. 4 & 1 Vict. c. 26, s. 18.

No will to be revoked by presumption. No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances, *Ib.* s. 19.

No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner required by the Act, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required by the Act to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same, *Ib.* s. 20.

In order that a will may be revoked by tearing, it must be shown that the testator intended that which he actually did of itself to have had the effect of revoking it without more. If he commences tearing it with the intention of revoking it, and being about to tear further stops *in medio*, the act not being complete, the will remains valid, *Elms v. Elms*, 27 Law J., Prob. C. 96; see *Waring v. Waring*, 6 Moore, P. C. 355.

A person having made his will executed under seal, and published and attested it as a sealed instrument afterwards for the purpose of revoking it, tore off the seal and with it part of a word; it was held, that the act of tearing off the seal was sufficient within 7 Will. 4 & 1 Vict. c. 26, s. 20, and that the will was thereby revoked, *Price v. Powell*, 3 H. & N. 341; 27 Law J., Exch. 609.

No alteration in a will shall have any effect unless executed as a will.

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as is required by the Act for the execution of the will; but the will,

with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will, *Ib.* s. 21.

Revocation of Wills.

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner before required by the Act, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown, *Ib.* s. 22.

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death, *Ib.* s. 23.

A devise not to be rendered inoperative by any subsequent conveyance or act.

Where the testator contracts to sell the devised estate and dies without having executed a conveyance to the purchaser, the devise remains in force as to the legal estate, and no further, this being all the interest which the testator has power to dispose of at his death; and the conversion, as between the real and personal representatives being completely effected by the contract (supposing it to be a binding one), the devisee takes only the legal estate, and the purchase money constitutes part of the testator's personal estate, 1 Jarm. on Wills, pp. 136, 137, 2nd ed.; *Farrar v. Earl Winterton*, 5 Beav. 1; *Moor v. Ruisbeck*, 12 Sim. 123; *Ex parte Hawkins*, 13 Sim. 569. See *Jermy v. Preston*, 13 Sim. 356.

9. A devise or bequest is said to be lapsed where the devisee or legatee dies in the intermediate time between the making of the will and the death of the testator, *Elliot v. Davenport*, 1 P. Wms. 83. Nothing was better established than if there was a devise to A. and his heirs, or to the heirs of his body, or to A. in tail, and A. died in the lifetime of the testator, the devise was void, *Brett v. Rigden*, Plowd. 345; *Hodgson v. Ambrose*, 1 Doug. 337; *Goodright v. Wright*, 1 Str. 25; 1 P. Wms. 397; *Warner v. Wright*, 1 Dougl. 344, n. 4; 1 Br. C. C. 219, n. A testator devised his real estate to A. and the heirs of her body. A. died in the lifetime of the testator, leaving a son; it was held, that the devise lapsed, and that the son could not take, *Hutton v. Simpson*, 2 Vern. 722; *Simpson v. Hornsby*, Prec. Ch. 429. And the republication of the will after the death of the devisee made no difference in a case of this kind, although it appeared

Lapse.

Of estates devised in fee or in tail.

*Lapse of
Devises, &c.*

Lapse in case
of tenants in
common.

that the testator knew before he made the codicil that the devisee in tail was dead, leaving a son, *Doe d. Turner v. Kett*, 4 T. R. 601. See *Ambrose v. Hodgson*, 1 Doug. 337; *Wright v. Warner*, 6 T. R. 517.

A devise or bequest in favour of several persons *nominatim as tenants in common* will lapse as to the shares of any who die in the testator's lifetime, *Ackerman v. Burrows*, 3 Ves. & B. 54; *Page v. Page*, 2 P. Wms. 489; *Lee v. Pain*, 4 Hare, 250. Thus, where the devise was to the testator's wife for life, with remainder to his four daughters as tenants in common in fee, and one of the daughters died before the testator, leaving a son, it was held, that the will was void as to one-fourth, *Packman v. Cole*, 2 Sid. 53, 78. But where a testator devised to the sisters of J. H., their heirs and assigns for ever, as tenants in common and not as joint tenants, the court, conceiving from the scope of the will that the testator looked to *the class*, and not to the number of individuals who might happen to compose it, decided that an only sister, who survived the testator, took the whole. It appeared that the testator was ignorant as to the family of J. H. who had three sisters, but two of them were dead before the making of the will, *Doe d. Stewart v. Sheffield*, 13 East, 526. See *Doe v. Scott*, 3 Maule & S. 300; *Viner v. Francis*, 2 Br. C. C. 658; 2 Cox, 190; *Shuttleworth v. Greaves*, 4 My. & Cr. 35.

Joint tenants.

In the case of a devise to two or more persons and their heirs as joint tenants, and the death of one in the testator's lifetime, the surviving devisee or devisees will take the whole estate, *Davis v. Kemp*, Carter, 4, 5; Vin. Abr. Devise (W. c.), pl. 14. See *ante*, pp. 1517, 1518. Where a legacy was given to two or more persons as joint tenants, although one or more of them died before the testator, or notwithstanding the testator revoked the interest intended to be given to any of them, such interest will not be considered lapsed or undisposed of, but will survive to the other legatee or legatees, *Buffar v. Bradford*, 2 Atk. 220; *Humphrey v. Tayleur*, Ambl. 136; *Dowsett v. Sweet*, Ambl. 175; *Morley v. Bird*, 3 Ves. 628, 631; 1 Roper on Leg. 417—419, 3rd ed.

Testator might
provide against
a lapse.

Although a testator is never supposed to mean to give to any but those who shall survive him, he may, if he thinks proper, prevent a devise or legacy from lapsing, but the will must be specially penned and clearly expressed, in order to have that effect; a mere declaration is not sufficient, unless another devisee or legatee be substituted, in the event of the first dying in the testator's lifetime, *Sibley v. Cook*, 3 Atk. 572; *Darrell v. Molesworth*, 2 Vern. 378; *Bridge v. Abbot*, 3 Br. C. C. 224; *Elliot v. Davenport*, 1 P. Wms. 85; *Sibthorp v. Moxon*, 3 Atk. 582; *Gittings v. M'Dermott*, 2 My. & K. 75.

Lapse not pre-
vented by
words of limi-
tation.

The extension of a devise or bequest to heirs or executors will not prevent the devise or legacy from lapsing; they are mere words of limitation, and indicate no more than an intention to vest in the donee

an absolute interest in the subject of the gift, *Elliot v. Davenport*, 1 P. Wms. 84; *Smith v. Pybus*, 9 Ves. 576. And the same rule prevails even where the legatee was dead at the time of the gift, which was to his executors, administrators and assigns, *Maybank v. Brooks*, 1 Br. C. C. 84. It was formerly decided that the word "or" inserted between the name of the devisee and the words of limitation, as in a gift to one or his heirs, or to him or his executors or administrators, or personal representatives, did not vary the construction, the expression being regarded as an inaccurate mode of annexing words of limitation to the gift, and not as designed to create a substitutional gift, in the event of the failure of the first by lapse, *Stone v. Evans*, 2 Atk. 86; *Wright v. Wright*, 1 Ves. sen. 409; *Reid v. Snell*, 2 Atk. 642; *Corbyn v. French*, 4 Ves. 418, 435; *Tidwell v. Ariel*, 3 Madd. 403; *Bone v. Cooke*, 3 Price, 332; *Waite v. Templer*, 2 Sim. 524. But it seems to be now decided, that the intention of substitution will be implied where there is an immediate gift to a person or his personal representatives or his heirs, *Gittings v. M'Dermott*, 2 My. & K. 69; *Hedges v. Harpur*, 9 Beav. 479; *Cotton v. Cotton*, 2 Beav. 67.

*Lapse of
Devises. &c.*

Where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will, 7 Will. 4 & 1 Vict. c. 26, s. 32.

Devises of
estates tail
shall not lapse.

Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed, for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will, *Ib.* s. 33. See cases on this section, *Shelford's Real Prop. Stat.* pp. 505, 506, 6th ed.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

This section does not substitute the issue for the deceased legatee, but gives the legacy to him absolutely as though he had survived the testator, and it is, therefore, disposable by the legatee, *Johnson v. Johnson*, 3 Hare, 157. This section does not apply to a testamentary appointment in execution of a limited power to appoint to children only, *Griffiths v. Gale*, 12 Sim. 354; nor to gifts to a class, for the intention was to provide against lapse merely, and not to alter the construction to be put on the will, *Olney v. Bates*, 3 Drew. 319. See

*Lapse of
Devises, &c.*

Wms. on Exors. 1098, 5th ed. But this section applies to a testamentary appointment made in exercise of a general power. A testatrix by her will, in 1840, in exercise of a general power, appointed the proceeds of real estate to a daughter, who died in her lifetime, leaving issue living at the testatrix's death; it was held, that the personal representative of the daughter was entitled, *Eccles v. Cheyne*, 2 Kay & J. 676.

Provisions and
clauses in a
will.

10. Many provisions and clauses in settlements are also usually inserted in wills, as clauses of survivorship, powers of maintenance and advancement, powers for the appointment of new trustees, and for their indemnity. The executors are also often authorized to compound debts, and compromise or submit to arbitration and settle all matters affecting the testator's estate at their discretion, see *ante*, SETTLEMENTS, Pref., and the *subsequent Precedents of Wills*. Some provisions may be inserted in a will which would not be necessary or good in a deed, or at least not liable to the same construction.

Payment of
debts.

It is usual to make provision in wills for the payment of debts. A general provision only will be necessary, unless the testator wish to exempt his personal estate, which is considered the proper and primary fund, and cannot be exempted without a declaration in express terms. So if he desires to charge a particular part of his real estates with the payment of debts in exoneration of the rest, such intention should be expressed. If he desires a mortgage on his real estate, which is devised to a particular devisee, to be discharged out of his personal estate, there should be an express declaration of such intention, 17 & 18 Vict. c. 113. At common law, the heir was bound to pay the debts of the ancestor only in respect of assets which descended to him, and the ancestor might defeat his specialty creditors by devising away his estates, until the 3 & 4 Will. & Mary, c. 14, which made such devises void as to creditors. By the 47 Geo. 3, st. 2, c. 74, amended and enlarged by the 11 Geo. 4 & 1 Will. 4, c. 47, the freehold lands of a trader were made liable to his simple contract debts; and by the 3 & 4 Will. 4, c. 104, all lands, both copyhold (which had not heretofore been liable) and freehold, belonging to all persons without distinction, are made assets for the payment of debts both by specialty and simple contract. See Shelford's Real Prop. Stat. pp. 457—479, 6th ed.

Legacies.
Specific.

Legacies and bequests are either specific or general. A sum of money may be sufficiently distinguished to be the subject of a specific legacy, but the courts are averse to construing legacies to be specific, unless they are expressly so given, or must be so necessarily by implication. A legacy of stock or money should be given generally, for if a testator gives part of a particular fund, as 1000*l.*, part of the consols standing in his name, and afterwards sell the stock, the legatee will lose his legacy unless it is declared to be one of quantity and not specific.

If a legacy is given generally, without specifying the time when it is to be paid, it is due on the day of the death of the testator, though not payable till the end of the year next after his death; hence, if the legatee happen to die within the year, his personal representative will be entitled to the legacy.

Provisions in Wills.

Legacy when payable.

But when a future time for the payment of the legacy is defined by the will the legacy will be vested or contingent, according as, upon construing the will, it appears whether the testator meant to annex the time to the payment of the legacy or to the gift of it. In ascertaining the intention of the testator in this respect, the courts of equity have established two positive rules of construction: 1st. That a bequest to a person *payable* or *to be paid* at or when he shall attain twenty-one years of age, or at the end of any other certain determinate term, confers on him a vested interest immediately on the testator's death, as *debitum in præsentì solvendum in futuro*, and transmissible to his executors or administrators; for the words "payable" or "to be paid" are supposed to disannex the time from the gift of the legacy, so as to leave the gift immediate, in the same manner in respect of its vesting as if the bequest stood singly and contained no mention of time, Swinb. Pt. VII. s. 23, pl. 9; Godolph. Pt. III. c. 24, s. 25; *Stapleton v. Cheales*, Prec. Chan. 317. 2nd. That if the words "payable" or "to be paid" are omitted, and the legacies are given at twenty-one, or *if, when, in case, or provided*, the legatee attain twenty-one or any other future definite period, these expressions annex the time to the substance of the legacy, and make the legatee's right to it depend on his being alive at the time fixed for its payment; consequently, if the legatee happens to die before that period arrives his personal representative will not be entitled to the legacy, *Hanson v. Graham*, 6 Ves. 245; Wms. on Exors. Part III. B. III. ch. 2, s. 5.

Legacy when vested.

When a testator has given a legacy by his will to a particular person, and afterwards by a codicil gives the same person another legacy, it should be declared whether the latter legacy is to be in addition to or in lieu of the legacy given by the will.

When a man seised of real estate, out of which his wife would be entitled to dower, makes a provision in her favour, it should be declared by the will, if so intended, that it shall be taken in lieu of dower.

When portions are given by will, care should be taken to define

Portions.

whether a sum of money given in the lifetime of the testator on the marriage of a child, or otherwise, should be considered as an ademption or satisfaction of the portion mentioned in the will. The court leans strongly against double portions, and has on many occasions held such payment to be an ademption, *Booker v. Allen*, 2 Russ. & M. 270; *Pym v. Lockyer*, 5 My. & Cr. 29.

Ademption.

At law, an executor is entitled to the residue of a testator's per-

Residue to executors.

Provisions in Wills.

sonal estate after the payment of debts and legacies; but a court of equity sometimes construed a trust to arise for the benefit of the next of kin; and now, by the 11 Geo. 4 & 1 Will. 4, c. 40, s. 1, executors are to be held trustees for persons entitled to the residue; but by sect. 2, the Act is not to affect their rights where there is no person entitled.

Whether an annuity shall determine on the bankruptcy of the annuitant, under a proviso against assignment, depends entirely on the intention expressed by the testator. An interest in property may be given to a party until he shall become bankrupt or insolvent, with a limitation over to another on his becoming so. See Shelford's Bankrupt Law, pp. 266, 268, 2nd ed.; *Rochford v. Robinson*, 9 Hare, 475. Form of Limitation, *post*.

Power of sale.

In order to authorize a sale of real estate, a power ought to be given to the executors or trustees in express terms, or be necessarily implied from the circumstances of the case, as where the payment of debts and legacies is expressly required. So a direction or power to raise money out of the rents and profits, is held to authorize a sale, unless where, from the terms of the will, a contrary intention can be inferred. Powers of this kind should be given in clear terms, and not depend upon implication.

Construction of wills.

11. Although the same strictness of expression is not necessary in wills as in deeds, yet too much care cannot be taken to pursue the descriptions which the law has given, and to use technical terms in a technical sense. It was settled, that in wills as in deeds, if no words of limitation were added, the devisee could only take a life estate.

Words in a will giving a fee.

Words of inheritance were not necessary in a will, as in a deed, to give a fee. The word "estate" was sufficient to pass a fee-simple, *Barry v. Edgeworth*, 2 P. Wms. 523; *Randall v. Tuchin*, 6 Taunt. 410; *S. C.* 2 Marsh. 113; unless restrained by other words, *Doe v. Buckner*, 6 T. R. 610; *Bruce v. Bainbridge*, 2 Brod. & B. 123. So the words, "all the rest and residue of my estate," *Tanner v. Wise*, 3 P. Wms. 295; *Shaw v. Bull*, 12 Mod. 596. So, "all my property, personal and real, for ever," *Doe v. Roper*, 11 East, 518.

A devise without words of limitation will pass the fee.

Where any real estate shall be devised on or after 1st January, 1838, to any person without any words of limitation, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by such will, 7 Will. 4 & 1 Vict. c. 26, s. 28.

No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable,

or an estate of freehold, shall thereby be given to him expressly or by implication, 7 Will. 4 & 1 Vict. c. 26, s. 30.

Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee-simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied, *Ib.* s. 31.

The "words "heirs of the body," which are necessary in a grant, to create an estate tail, were not necessary in a devise. Any words denoting an intention to give an estate tail would pass an estate tail, as "a devise to a man and his issue," or "to a man and his children," *Wild's case*, 6 Co. 16; Co. Litt. 274. So likewise words of limitation and words of purchase were more strictly construed in deeds than in wills. In a deed, the word "issue" was always a word of purchase; but in a will, it was either a word of purchase or of limitation, as would best answer the intentions of the testator. And in order to give effect to the devisors' general intent, the court would overlook a particular intent inconsistent therewith; therefore, neither the devise of an express estate for life to the first taker, or the interposition of a devise to trustees to preserve contingent remainders, if followed by a limitation to the heirs of his body, would prevent him from taking an estate tail, and the courts have never departed from this rule, except where the intent has appeared so plainly to the contrary, that no one could misunderstand it, *Poole v. Poole*, 3 B. & P. 620; Fearn. Cont. Rem. 290. The words "heirs of the body," though words of limitation, may, by an explanatory context, be reduced to words of purchase; but the inference to be drawn from such context must be clear, *Grimmoe v. Howes*, 23 Beav. 184. See *Roddy v. Fitzgerald*, 6 H. L. C. 871.

By the rules of common law, no remainder can be limited after an estate in fee-simple, nor a freehold be created to commence *in futuro*; but the courts have relaxed in the application of these rules to devises, in order to support the will of the testator. There is, therefore, now a considerable distinction between limitations in deeds and in wills. What in a deed might have been held to be void as a remainder, may be held good, as an executory devise is construed in a will; an executory devise does not want any particular estate to support it, in the same manner as a remainder. Likewise an executory devise may be limited after a fee, as where a man devises land to A. and his heirs; but if he die before the age of twenty-one, then to B. and his heirs.

In making wills, great care must be taken that the gifts are so

Construction of Wills.

Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

Fee tail.

Estate for life.

Limitations in deeds and wills.

Executory devises.

Construction of Wills.

limited that they must take effect within the period prescribed by law against perpetuities. A limitation by way of executory devise, which is not to take effect until after the determination of a life or lives in being, and twenty-one years as a term in gross, and without reference to the infancy of any person who is to take under such limitation, or of any other person, is a valid limitation. It is otherwise if to the term in gross of twenty-one years be added the number of months equal to the period of gestation, for that period will be allowed only in those cases in which the gestation actually exists, *Cadell v. Palmer*, 1 Cl. & Fin. 372; 10 Bing. 140; *Bengough v. Edwards*, 1 Sim. & S. 173.

The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

In any devise or bequest, made on or after the 1st of January, 1838, of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, are to be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but the Act does not extend to cases where such words import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description for obtaining a vested estate by a preceding gift to such issue, 1 Vict. c. 26, s. 29.

Trusts of accumulation restricted.

During the term which the law allows for the estate to be suspended from vesting absolutely in some person, any accumulation of the rents and profits might formerly be made, *Thellusson v. Woodford*, 4 Ves. 227; 11 Ves. 112; but now, by the 39 & 40 Geo. 3, c. 98, the power of settling and devising property for the purpose of accumulation is restricted to twenty-one years after the death of the grantor or testator. This statute has been held to refer only to the interest, and that the principal remains the same as before the statute; and also that a trust by will, for accumulation beyond the period allowed, is void only for the excess, *Griffiths v. Vere*, 9 Ves. 127; *Shaw v. Rhodes*, 1 My. & Cr. 135. See 1 Jarm. on Wills, pp. 246—260, 2nd ed.

Joint tenancy. Tenancy in common.

A devise to a plurality of persons creates a joint tenancy; but any words which denote an equality, create a tenancy in common, as "equally to be divided," "share and share alike," *Doe v. Laming*, 2 Burr. 1100. See *ante*, p. 1517.

Cross remainders.

Cross remainders may likewise be implied in a will, although not in a deed; but the presumption of law is in favour of raising cross remainders between two only, and against raising cross remainders between more than two; but this presumption, in either case, may be

rebutted by manifest circumstances of intention apparent on the face of the will, *Perry v. White*, Cowp. 77. In wills correctly drawn, limitation of cross remainders are never omitted. See 2 Jarm. on Wills, pp. 456—472.

What interests will pass by Wills.

12. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will, 7 Will. 4 & 1 Vict. c. 26, s. 25.

A residuary devise to include estates comprised in lapsed and void devises.

This section is to be construed upon the principle of assimilating a residuary devise of real estate with a similar bequest of personality, and therefore a devise which was by construction residuary, was held to pass lands which had been included in a devise void as being contrary to law, *Carter v. Haswell*, 3 Jur., N. S. 788; 26 Law J., Ch. 576; see Shelford's Real Prop. Stat. p. 500, 6th ed.

A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will, 7 Will. 4 & 1 Vict. c. 26, s. 26.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

It was an established rule before this statute, that if a man having lands in fee and lands for years devised all his lands and tenements, the fee simple estates only would pass and not the lease for years. But if a man, having a lease for years and no fee simple estates, devised all his lands and tenements, the lease for years passed, for otherwise the will was inoperative, *Rose v. Bartlett*, Cro. Car. 292.

Leaseholds, however, would pass with freeholds, under a devise applicable only to the latter, where an intention to include them could be collected from the will, *Lowther v. Cavendish*, 1 Eden, 99; Amb. 356, and there were other exceptions to the above rule.

A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described

A general gift shall include estates over which the testator has a general power of appointment.

*What interests
will pass by
Wills.*

in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will, 7 Will. 4 & 1 Vict. c. 26, s. 27. See Shelford's Real Prop. Stat. pp. 502, 562, 6th ed.

A power to appoint by will amongst the children in such manner as the appointor shall think proper is not within this section of the Act, *Cloves v. Andry*, 12 Beav. 604.

A will of a married woman under a general power of appointment by will must be taken to be in execution of a power where the words of the will would otherwise have nothing upon which to operate, *Shelford v. Acland*, 23 Beav. 10; 3 Jur., N. S. 8; 26 Law J., Ch. 144; see other cases, Shelford's Real Prop. Stat. pp. 502, 503, 6th ed.

No. DCXLIX.

*Of Real Estates
in strict
Settlement.*

No. DCXLIX.

Will of Real Estates in strict Settlement. Limitation to Trustees for a Term of 1000 Years, remainder to Use of Testator's Eldest Son for Life, remainder to each of the Sons of Testator's Son born in his lifetime successively for Life, remainder to first and other Sons of such Sons successively in tail male, remainder to first and other Sons of Testator's Son, born after Testator's death, successively in tail male, with divers remainders over in tail male and in tail general. Trusts of the Term to raise deficiency of Personal Estate for Payment of Debts, and Legacies and Portions for Younger Children. The Shares of Daughters being settled to their separate Use for Life, with remainder to their Children, with the usual Trusts for Maintenance, &c. Power for Married Daughter to appoint Life Interest to her Husband. Provision as to the receipt of Rents during minority of Person entitled to Real Estate. Powers for Tenants for Life to Jointure, to charge with Portions for Younger Children. Powers to grant Mining Leases. Power to grant Licences to Copyholders. Power of Sale, Exchange and Enfranchisement. Devise of Copyholds to Trustees and Bequest of Leaseholds to Trustees upon Trusts to correspond with Limitations of Freehold Estates. Bequest of Personal Chattels as Heirlooms. Trustee Clauses.

This is the last will and testament of me W. M. of &c. esquire I give and devise all my manors messuages or tenements farms lands and hereditaments whatsoever in the Counties of or elsewhere in England or Wales of or to which I

am or at my death shall be seised or entitled for any devisable estate or interest or of which I have power to dispose by this my will (save and except my copyhold and leasehold estates hereinafter devised and such estates as are or shall be vested in me upon any trusts or by way of mortgage) with their and every of their rights members and appurtenances To the uses upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared of and concerning the same (that is to say) *To the use* of G. of &c. and H. of &c. their executors administrators and assigns for and during and unto the full end and term of 1000 years to commence and be computed from my decease and thenceforth next ensuing and fully to be complete and ended without impeachment of or for any manner of waste (a) *Upon* and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared concerning the same And from and after the expiration or sooner determination of the said term of 1000 years and in the meantime subject thereto and to the trusts thereof (b) *To the use* of my eldest son A. and his assigns for and during the term of his natural life without impeachment of or for any manner of waste and from and after his decease *To the use* of each of the sons of my said son A. who shall be born during my lifetime for the term of his natural life without impeachment of or for any manner of waste every such son to take respectively in the order of his birth and after his decease to the use of his first and every other son severally and successively in remainder one after the other in tail male so that the elder of the said sons of my said son A. to be born during my lifetime and his first and other sons successively and the heirs male of their respective bodies issuing may be preferred to and take before the younger of the said sons of my said son A. to be born during my lifetime and his and their respective first and other sons successively and the heirs male of their respective bodies issuing and in default of such issue *To the use* of the son and sons of my said son A. who shall be born after my decease severally and successively in remainder one after the other according to their respective seniorities in tail male so that the elder of the sons of my said son A. born after my decease and the heirs male of their respective bodies may be preferred to and take before the younger of

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Settlement.*

To trustees for
term of 1000
years.

Remainder to
testator's son
for life.

Remainder to
each son of
testator's son
born in his life-
time for life,
with remainder
in tail male.

Remainder to
sons of testa-
tor's son born
after his decease
in tail male.

(a) See *ante*, p. 1364, pl. 5.

(b) See 19 Ves. 358.

No. DCXLIX. the said sons of my said son A. born after my decease and the heirs male of their respective bodies issuing and in default of such issue *To the use* of all my sons hereafter to be born every such son to take respectively in the order of his birth during the term of his natural life without impeachment of or for any manner of waste And after his decease to the use of his first and other sons severally and successively in remainder one after the other in tail male so that the elder of my said sons hereafter to be born and his first and other sons successively and the heirs male of their respective bodies issuing may be preferred to and take before the younger of my said sons hereafter to be born and his and their respective first and other sons successively and the heirs male of their respective bodies issuing and in default of such issue [*It will be observed, that the preceding limitations are in tail male if it be intended to let in the female issue of the tenants for life; on failure of issue male the following limitations in tail general should be inserted*] *To the use* of the first and other sons of my said son A. who shall be born in my lifetime severally and successively and in remainder one after the other in tail so that the elder of the said sons born in my lifetime and his first and other sons successively and the heirs of their respective bodies issuing may be preferred to and take before the younger of the said sons of my said son to be born during my lifetime and his and their respective first and other sons successively and the heirs of their respective bodies issuing And in default of such issue *To the use* of the son and sons of my said son A. who shall be born after my decease severally and successively in remainder one after the other in tail so that the elder of the sons of my said son A. born after my decease and the heirs of their respective bodies may be preferred to and take before the younger of the said sons of my said son born after my decease and the heirs of their respective bodies issuing And in default of such issue [*Here repeat the limitations so as to let in the heirs of the body generally of the first and other sons of the other tenants for life. If the testator's daughters and their issue are to take on failure of all the issue of the sons, limitations to effect such object must be introduced, see ante, p. 1373*] And in default of such issue *To the use* of my brother W. and his assigns during his natural life without impeachment of or for any manner of waste And after his decease to the use of each of the sons of the said W. who shall be born during my lifetime for the term of his life without impeachment of or for any

Of Real Estates
in strict
Settlement.

Remainder to
testator's other
sons for life, &c.

Remainder to
first and other
sons of tenant
for life in tail
general.

Remainder to
testator's bro-
ther for life.

manner of waste And after his decease to the use of his first and other sons successively in tail male so that the elder of the said sons of the said W. to be born in my lifetime and his first and other sons successively and the heirs male of their respective bodies issuing may be preferred to and take before the younger of the said sons of the said W. to be born during my lifetime and his and their respective first and other sons successively and the heirs male of their respective bodies issuing and in default of such issue To the use of the son and sons of the said W. who shall be born after my decease successively according to their respective seniorities in tail male [*And in default of such issue numerous other remainders over*] And as to the said term of 1000 years hereinbefore limited to the said G. and H. their executors administrators and assigns I do declare that the same term is so hereby limited to them upon and for the trusts intents and purposes hereinafter declared and contained of and concerning the same (that is to say) *Upon trust* that they the said G. and H. or the survivor of them his executors or administrators their or his assigns shall and do by demising assigning or otherwise disposing of the said manors and other hereditaments hereby devised or any of them or any part thereof for the whole or any part of the said term of 1000 years or by with and out of the rents issues and profits of the said manors and other hereditaments or any of them or by bringing actions against the tenants or occupiers of the same premises or any of them for the rents then in arrear or by more than one or by all of the aforesaid or by any other lawful ways and means levy and raise any sum or sums of money which shall be necessary or which they the said G. and H. or the survivor of them his executors or administrators or their or his assigns shall in their or his discretion think fit or expedient to levy and raise for the payment of my funeral and testamentary expenses and debts and the legacies which I shall give by this my will or by any codicil or codicils thereto And I hereby declare my will to be that the said G. and H. and the survivor of them his executors or administrators or their or his assigns do and shall pay and apply the monies to be levied and raised by the ways and means aforesaid or any of them in or towards the payment satisfaction and discharge of my said funeral and testamentary expenses debts and legacies accordingly And I hereby declare that it shall and may be lawful for the said G. and H. and the survivor of them his executors

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Settlement.*

Trusts of the
term.

To raise money
for payment of
debts and
legacies.

Receipts of
trustees to be
sufficient.

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 in strict
 Settlement.*

Testator's personal estate to be primary fund for payment of debts and legacies.

administrators or their or his assigns to sign and give a receipt or receipts in writing for the sum or sums of money so to be raised by them or him by sale or mortgage or otherwise as aforesaid under the trusts hereinbefore declared And that the person or persons paying or advancing the same respectively and taking such receipt or receipts as aforesaid shall not be answerable or accountable for the loss misapplication or nonapplication or in anywise bound or concerned to see to the application thereof or to ascertain or inquire that my personal estate or any part thereof shall have been previously applied towards payment of my funeral and testamentary expenses debts and legacies or that the money proposed to be levied and raised is actually wanted for the purposes aforesaid the same being absolutely left to the discretion of my said trustees or trustee for the time being and no other person or persons is or are to be concerned or implicated therein And although I have hereby given my said trustees of the said term of 1000 years a discretionary power to resort to my said real estates for raising money for payment of my said funeral and testamentary expenses debts and legacies before my personal estate not specifically bequeathed shall have been applied or exhausted in or towards the payment thereof I do hereby declare that I have given them this discretionary power in order to facilitate the raising of money for the purposes aforesaid and to prevent the difficulties and delay which might otherwise occur And therefore notwithstanding the discretionary power so given by me to the same trustees or trustee as aforesaid it is my intention and I do hereby declare my will to be that though as between strangers and my said trustees and the persons claiming under this my will both or either of the said funds may be resorted to as my said trustees or trustee for the time being shall think fit yet as between the person or persons entitled to my personal estate not hereinafter specifically bequeathed and the persons entitled to my real estate hereby devised in strict settlement as hereinbefore is mentioned my said personal estate not hereinafter specifically bequeathed is to be considered as the primary and the said term of 1000 years the secondary fund for the payment of my funeral and testamentary expenses debts and legacies And therefore if the said real estate shall be first resorted to the personal estate not specifically bequeathed shall so far as the same will extend make good the money to be raised out of my said real estate and for that purpose as the case may require either be applied

in exoneration of the said real estates or be laid out in the purchase of lands to be settled to the uses hereinbefore limited by me of and concerning the hereditaments hereinbefore by me devised *And upon further trust* that if at my decease there shall be any child or children of my body other than and besides or not being an eldest or only son of my body who by virtue of or under the limitations hereinbefore contained shall be for the time being entitled to the manors and other hereditaments hereby devised in strict settlement in remainder immediately expectant on the determination of the said term of 1000 years then and in such case the trustees or trustee for the time being of the same term do and shall by all or any of the ways and means hereinbefore mentioned or by any other reasonable ways and means levy and raise the sum of £ of lawful money of Great Britain with interest for the same after the rate of £4 for every one hundred pounds by the year to be computed from the expiration of one year from the day of my decease And do and shall lay out and invest the said sum of £ in the purchase of a share or shares of the Parliamentary stocks or public funds of Great Britain or at interest upon Government or real securities in England or Wales but not in Ireland And do and shall from time to time alter vary and transpose such stocks funds and securities at their or his discretion And do and shall stand and be possessed of and interested in the said sum of £ and the stocks funds and securities on which the same shall or may be laid out or invested and the interest dividends and annual produce thereof *Upon* and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed declared or contained of and concerning the same (that is to say) If there shall be but one child of my body living at my decease other than and besides an eldest or only son so for the time being entitled as aforesaid Then and in such case if such child shall be a son *Upon trust* for such son and the same to be an interest vested in and to be paid transferred and assigned to such son at his age of twenty-one years And if such child shall be a daughter then the said sum of £ and the stocks funds and securities on which the same shall be laid out and invested shall be held for the benefit of such daughter and her issue as hereinafter is mentioned *And upon further trust* that if there shall be two or more children of my body living at my decease or born in due time after (other than and besides an eldest or only son so for the

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*Of Real Estates
 in strict
 Settlement.*
 Trusts to raise
 portions for
 testator's
 younger chil-
 dren.

No. DCXLIX. time being entitled as aforesaid Then and in such case the said
Of Real Estates sum of £ and the stocks funds and securities upon which
in strict
Settlement. the same shall be laid out and invested shall be divided into as
 many equal shares as there shall be children of my body living
 at the time of my decease or born in due time after (other than
 and besides an eldest or only son so for the time being entitled
 as aforesaid) the share or shares of such of them as shall be a
 son or sons to be a vested interest or vested interests in and to
 be paid transferred and assigned to such son or sons respectively
 on or at his or their age or respective ages of twenty-one years
 And the share or shares of such of the said children as shall be
 a daughter or daughters to be held for the benefit of such
 daughter or daughters and her or their issue as hereinafter is
 mentioned *Provided always* and I do hereby declare my will
 to be that if there shall be more than one child of my body for
 whom portions are intended to be hereby provided as aforesaid
 and any of them being a son or sons shall depart this life or
 become an eldest or only son so for the time being entitled as
 aforesaid under the age of twenty-one years or being a daughter
 or daughters shall die under the age of twenty-one years without
 being or having been married then the share intended to be
 hereby provided for each such son so dying or becoming an
 eldest or only son entitled as aforesaid and the share intended
 to be provided for the benefit of each such daughter and her
 issue as hereinafter is mentioned and hereinbefore is referred to
 and who shall so die as last aforesaid and also the share or
 shares surviving or accruing by virtue of this present clause
 shall go accrue and belong to the survivor or survivors or other
 or others of the said son or sons not being an eldest or only son
 so for the time being entitled as aforesaid and be for the benefit of
 the survivor or survivors or other or others of the said daughters
 and her or their respective issue as hereinbefore and hereinafter
 is respectively mentioned of and concerning the said original
 share or shares in the said sum of £ and the stocks funds and
 securities on which the same shall or may be laid out or invested
And I do hereby declare my will to be that until the child or
 children of my body for whom a portion or portions are or is
 intended to be hereby provided as aforesaid being a son or sons
 shall attain his or their age or respective ages of twenty-one
 years or being a daughter or daughters shall attain her or their
 age or respective ages of twenty-one years or marry under that
 age the said G. and H. and the survivor of them and the exe-

Clause of sur-
vivorship.

Proviso for
maintenance of
younger
children during
minority.

cutors administrators and assigns of such survivor do and shall pay and apply the whole or such part as they or he shall think fit of the interest dividends and annual proceeds of the portion to which any child shall for the time being be entitled under the trusts hereinbefore declared for or towards his or her maintenance or education and do and shall accumulate all the residue (if any) of the yearly interest dividends and annual proceeds of the expectant portion or portions of such son or sons and of the portion or portions the trusts of which are hereinbefore declared to be for the benefit of my daughter or daughters and her or their issue respectively as aforesaid or of such of the said portions as shall not be vested in the way of compound interest by investing the same and all the resulting income and produce thereof in the name or names of the said G. and H. in or upon any such stocks funds or securities as are hereinbefore mentioned for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded with power nevertheless for them or him to resort to the accumulations of any preceding year or years and to apply the same for or towards the maintenance or education of the child for the time being presumptively entitled thereto in the same manner as such accumulations might have been applied in case they had been interest or annual produce arising from the original trust fund in the year in which the same shall be so applied *Provided always* and I hereby declare that it shall be lawful for the said trustees and the survivor of them and the executors and administrators of such survivor at any time or times after my death and during the minority of any of my sons for whom a portion is intended to be hereby provided to raise any part or parts of the then expectant or presumptive portion of any of my sons under the trusts hereinbefore declared not exceeding in the whole one half part of his then expectant portion and to pay or apply the same for his preferment advancement or benefit as they the said trustees or trustee for the time being shall think fit *And* I do hereby declare my will to be that the said G. and H. their executors administrators and assigns shall hold the portion or portions hereinbefore directed by me to be raised for the benefit of my daughter or daughters or her or their issue *Upon trust* during the respective life of each of my said daughters if more than one or of my daughter if only one to pay the interest dividends and annual produce of the share of and in the sum of

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*Of Real Estates
in strict
Settlement.*

Power to advance to sons.

Trusts in favour of children of testator's daughters.
Interest of share of each daughter to be for her separate use for life.

No. DCXLIX. money so intended for her and their issue respectively as aforesaid and the stocks funds and securities upon which the same shall be laid out and invested to such person or persons and upon and for such intents trusts and purposes as such daughter whether she shall be single or married shall by any writing or writings to be by her signed after the interest dividends and annual produce of such share shall become due direct or appoint And so that she shall not in anywise dispose of or affect the same by way of sale mortgage charge or otherwise in the way of anticipation and in default of such direction or appointment into her own hands for her own benefit for the sole separate and peculiar use and benefit of such daughter independently and exclusively of any husband or husbands whom she may marry and in nowise to be subject or liable to his or their control interference or engagements and the receipts &c. (see *ante*, p. 1416) And after the decease of such daughter *Upon trust* to pay transfer and assign the said sum of money stocks funds and securities hereinbefore declared to be for the separate use of such daughter to all and every the children and child of her body who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age to be divided between or among them if more than one in equal shares and if but one the whole to that one child And if any one or more of my daughter or daughters shall have no son who shall attain the age of twenty-one years or daughter who shall attain that age or marry under that age then and in such case and so often as the same shall happen *Upon trust* after the decease or such failure of issue as aforesaid of the daughter or daughters who shall so die and whose issue shall so fail to pay the interest dividends and annual produce of the sum or sums of money stocks funds and securities to the interest dividends and annual produce of which the daughter or daughters so dying or by survivorship or accruer would have become entitled for her life for her separate use as hereinbefore is mentioned to the other and others of my said daughters in equal shares if more than one for her and their own respective separate use and benefit and disposal as hereinbefore is expressed with respect to the payment of the interest dividends and annual produce of her or their original sum or sums of money stocks funds and securities And after the decease of any such last mentioned daughters *Upon trust* to pay transfer and assign the sum or sums of money stocks funds and securities and the interest dividends and annual produce of which

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Settlement.

Remainder to
children of
daughters
equally.

Clause of sur-
vivorship as to
shares of
daughters.

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 in strict
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such daughter was or by survivorship or accruer might have become entitled for her life for her separate use as hereinbefore is mentioned to all and every the children and child of her body who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age to be divided between or among the said children if more than one in equal shares and if there shall be but one such child then the whole to that one child And if there shall be such failure of issue as aforesaid of all my daughters save one then *Upon trust* after the decease and such failure of issue as aforesaid of all my other daughter or daughters save one to pay the interest dividends and annual produce of all the portions hereinbefore directed to be raised for the benefit of my said daughters and their issue respectively and of the stocks funds and securities in or upon which the same shall be laid out and invested to such other daughter for her life for her separate use as hereinbefore is expressed with respect to the payment of the interest dividends and annual produce of the said original sum of money stocks funds and securities and after her decease *Upon trust* to pay transfer and assign all the said portions hereinbefore directed to be raised as last aforesaid and the stocks funds and securities on which the same shall or may be laid out or invested as aforesaid to all and every the children and child of her body who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age to be divided between or among the said children if more than one in equal shares and if but one the whole to be paid transferred or assigned to that one child *Provided always* and I hereby declare that it shall be lawful for the said G. and H. and the survivor of them and the executors or administrators of such survivor at any time or times after the decease of each of my said daughters respectively or in her lifetime with her consent in writing whether married or sole to raise any part or parts of the then expectant or presumptive or vested share of any child of any of my said daughters under the trusts hereinbefore declared not exceeding in the whole for any one such child one half part of his or her said then expectant or presumptive or vested share and to pay and apply the same for his or her preferment advancement or benefit as the said trustees or trustee for the time being shall think fit And I do hereby declare my will to be that after the decease of my daughters and during the suspense of the absolute vesting of the sum of money stocks funds or securities in-

Power of advancement.

Maintenance.

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 in strict
 Settlement.*

tended to be provided for the benefit of each such daughter and her issue in one or more of her child or children under the trusts hereinbefore expressed or contained of or concerning the same the said G. and H. and the survivor of them and the executors administrators and assigns of such survivor do and shall pay the interest dividends and annual produce of the sum of money stocks funds and securities to which any such child or children may be entitled in expectancy under the trusts aforesaid for or towards his or her maintenance or education and that the said G. and H. or the survivor of them or the executors or administrators of such survivor may so pay and apply the same to the guardian or guardians of such child or children without seeing to the application thereof and without regard to the ability of the father of such child or children if living to provide for the maintenance of his child or children And do and shall during such suspense of absolute vesting as aforesaid accumulate all the residue (if any) of the same interest dividends and annual produce in the way of compound interest by investing the same and all the resulting income and produce thereof from time to time in or upon any such stocks funds or securities as are hereinbefore mentioned for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded with power for the said trustees or trustee for the time being to resort to the accumulations of any preceding year or years and to apply the same for or towards the maintenance or education of the child for the time being presumptively entitled thereto in the same manner as such accumulations might have been applied in case they had been interest dividends or annual produce arising from the original trust fund in the year in which the same shall be so applied *Provided always* that if none of my daughters shall have a son who shall attain the age of twenty-one years or a daughter who shall attain that age or marry under that age then and in that case the sum or sums of money so directed to be raised for the benefit of my daughters and their respective issue as hereinbefore is mentioned and the stocks funds and securities in or upon which the same shall be laid out and invested or such parts thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained shall be held in trust for &c. [*here add the ultimate trust according to the intention*] *Provided always* and I do hereby further declare

Power to

that notwithstanding any of the trusts hereinbefore declared it shall be lawful for each and every of my daughter or daughters at any time or times whether before or after marriage by any deed or deeds to be by her sealed and delivered in the presence of and attested by two or more credible witnesses or by her last will and testament in writing or any codicil thereto or any writing in the nature of her last will and testament to be by her signed in the presence of and attested by two or more credible witnesses to appoint and direct that the whole or any part of the interest dividends and annual produce of her respective share of and in the said trust monies stocks funds and securities shall after her decease be paid to any husband whom she may marry and who shall survive her and his assigns for his life *Provided always* and I hereby declare &c. [*subject to trusts of term, remainderman to receive surplus income, ante, p. 1374*] *Provided always* and I do hereby declare my will to be that when the trusts hereinbefore declared of and concerning the said term of 1000 years shall be fully performed or satisfied or become unnecessary or incapable of taking effect and the said G. and H. and each of them their and each of their executors administrators and assigns shall be fully reimbursed and satisfied all costs charges and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid and which they are hereby respectively authorized to levy and raise by all or any of the ways and means hereinbefore mentioned and to retain accordingly the said term of 1000 years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein or any part thereof in pursuance of the trusts aforesaid) absolutely cease and determine *Provided always* and I hereby declare my will to be that if any person who under or by virtue of this my will would (if this present proviso had not been herein inserted) for the time being entitled to the possession or to the receipt of the rents and profits of the said manors and other hereditaments hereby devised in strict settlement as tenant for life or as tenant in tail male or in tail by purchase shall be under the age of twenty-one years Then and in such case and so often as the same shall happen I give and devise the manors and other hereditaments hereby devised in strict settlement to the use of A. B. of &c. and C. D. of &c. and their executors and administrators during the minority of every person hereby made tenant for life and tenant in tail male or in tail by purchase who under or by virtue of this will would (if this present clause was not inserted) for the

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daughter to appoint the interest of her share to her husband.

Proviso for cesser of term on performance of the trusts.

Declaration as to the receipt and application of rents during minorities.

No. DCXLIX. time being be entitled to the possession or to the receipt of the rents and profits of the manors and other hereditaments hereby devised in strict settlement *Upon trust* and to the intent that the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor (subject and without prejudice to the said term of 1000 years and the trusts thereof) shall enter into the possession or receipt of the rents and profits of the same manors and other hereditaments and shall during the minority of such tenant for life or tenant in tail male or in tail by purchase continue such possession or receipt of rents and profits and manage or superintend the management of the same hereditaments and premises with full power to fell timber or cut underwood from time to time in the usual course for sale or otherwise and to erect pull down and repair houses and other buildings and erections and to drain or otherwise improve all or any of the said hereditaments and premises and to insure houses buildings or other property against loss or damage by fire and to make allowances to and arrangements with tenants and others and to accept surrenders of leases or tenancies and generally to deal with the premises as they or he might do if they or he were the absolute owners thereof and shall from time to time during such minority by and out of the rents and profits of the said hereditaments and premises (including the produce of the sale of timber and underwood) pay and discharge the expenses incurred in or about such management or in the exercise of any of the powers aforesaid or otherwise in respect of the premises and all outgoing not payable by any tenant or other person and keep down any annual sum or sums of money which may for the time being be charged upon the same premises or any part thereof and the interest of any principal sum or sums of money which may be charged by way of mortgage or otherwise upon the same premises or any part thereof and apply any annual sum or sums of money which they or he shall think proper according to the age of such minor in or towards the maintenance or education of such minor And invest the residue of such rents and profits in their or his names or name in or upon any of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England or Wales but not on real securities in Ireland to be from time to time altered or varied as to them or him shall seem meet And accumulate the dividends interest and annual produce of the said stocks funds and securities in the way of compound interest by investing the same and all resulting income produce

thereof from time to time and shall stand and be possessed of No. DCXLIX.
 and interested in the said rents and profits and the said original *Of Real Estates*
 and accumulated funds and securities and the dividends interest *in strict*
 and annual produce thereof upon the trusts following (that is to *Settlement.*
 say) If the tenant for life or tenant in tail male or in tail by
 purchase during whose minority the said rents and profits shall
 have been accumulated as aforesaid shall attain the age of
 twenty-one years or shall die under that age leaving issue en-
 titled or inheritable to the manors and other hereditaments
 hereby devised in strict settlement under the limitations here-
 inbefore contained *Then upon trust* to pay transfer or assign
 the same to such tenant for life or tenant in tail male or in
 tail by purchase his executors or administrators as his personal
 estate But if such tenant for life or tenant in tail male or in
 tail by purchase shall die under the age of twenty-one years
 without leaving issue entitled or inheritable to the same manors
 and other hereditaments under the limitations hereinbefore con-
 tained living at his decease Then upon and for the trusts
 intents and purposes and with under and subject to the powers
 provisoes and declarations herein contained of and concerning
 the monies to arise from a sale in pursuance of the power of
 sale hereinafter contained and the stocks funds and securities
 in or upon such monies are hereinafter authorized to be in-
 vested and the dividends interest and annual produce thereof
Provided always and I hereby declare my will to be that it
 shall be lawful for every person hereby made tenant for life of
 the manors and other hereditaments hereby devised in strict
 settlement at any time or times either before or after he shall
 by virtue of this my will for the time being be entitled to the
 possession or to the receipt of the rents and profits of the same
 manors and other hereditaments by any deed or deeds with or
 without power of revocation and new appointment or by his
 will or any codicil thereto (but subject and without prejudice
 to the said term of 1000 years and the trusts thereof and to
 the uses and estates preceding the estate of the person ex-
 exercising this power and to the powers annexed to such pre-
 ceding uses or estates if any such uses estates or powers
 shall be then subsisting or capable of taking effect or being
 exercised and also subject and without prejudice to the uses or
 estates (if any) which shall or may be limited in exercise of
 the same powers or any of them) to limit or appoint *To* or to
 the use of or in trust for any person or persons whom he may
 marry or have married for her or their life or respective lives or

Power for
 tenants for life
 to jointure.

To any wife,
 either in bar of
 dower or not.

No. DCXLIX. *for any less period and in full of her or their jointure or respective jointures, or in part only thereof, and in bar or without being in bar of her or their dower freebench or thirds at common law or by custom or otherwise and either before or after marriage any annual sum or annual sums yearly rent-charge or yearly rent-charges to take effect after his decease so that the same shall not exceed in the whole the annual sum or yearly rent-charge of five hundred pounds sterling for any one such person to be issuing and payable out of and charged and chargeable on all or any part of the manors and other hereditaments free and clear of all deductions for present or future taxes charges assessments or impositions or any other matter cause or thing whatsoever and to be paid at such times and places and in such manner as to him shall seem meet and for the purpose of securing the annual sum or sums or yearly rent-charge or yearly rent-charges so to be appointed as aforesaid it shall be lawful for him to limit and appoint to any person or persons respectively to whom the said annual sum or sums yearly rent-charge or rent-charges shall be so appointed as aforesaid or to any trustee or trustees for such person or persons respectively such powers and remedies for recovering and enforcing payment thereof by distress and entry upon and perception of the rents issues and profits of the hereditaments and premises so to be charged with the said annual sum or sums yearly rent-charge or rent-charges as to him shall seem meet and also to limit and appoint the hereditaments and premises so to be charged as aforesaid to such person or persons for such term or terms of years with or without impeachment of waste to take effect immediately after his decease as to him shall seem meet as a further security for the payment of the said annual sum or sums or yearly rent-charge or rent-charges so that every such term or terms of years if any such shall be limited be made to determine subject and without prejudice to any disposition which may be made thereof under the trusts to be declared by virtue of this power on the death of the person or persons for the benefit of whom the same shall be created and the payment of the arrears of the rent-charge or respective rent-charges limited to such person or persons and of the expenses incurred by the non-payment thereof* *Provided that* if any person hereby made tenant for life at any time or times hereafter before he shall by virtue of or under the limitations hereinbefore contained be in the actual possession or entitled to the actual receipt of the rents issues and profits of the hereditaments and premises here-

Jointure when
to take effect.

inbefore devised shall in exercise of the power herein contained in that behalf limit or appoint to any person or persons whom he shall marry any annual sum or sums or yearly rent-charge or rent-charges in manner aforesaid then and in every such case the annual sum or sums or yearly rent-charge or rent-charges so to be limited or appointed as aforesaid shall not take effect upon or charge the hereditaments and premises intended to be charged with the same respectively or be payable unless and until the person limiting or appointing the same as aforesaid shall become or if then living would have become under or by virtue of the limitations aforesaid or some of them entitled to the possession or to the receipt of the rents issues and profits of the same hereditaments and premises And I declare that the said manors and hereditaments hereby devised in strict settlement or any of them shall not under the power lastly hereinbefore contained be at any one time subject to the payment of any yearly rent-charges exceeding in the whole the annual sum of £ and that so much of any annual sum by which any excess over the said annual sum of £ shall have been occasioned shall from time to time during the continuance of such excess not be raised out of the said premises and the same annual sums and yearly rent-charges shall have priority of payment according to the priority of the estates of the several persons exercising the power lastly hereinbefore contained *Provided always* and I hereby declare my will to be That it shall be lawful for every person hereby made tenant for life of the manors and other hereditaments hereby devised in strict settlement at any time or times either before or after he shall by virtue of this my will for the time being be entitled to the possession or to the receipt of the rents and profits of the same manors and other hereditaments by any deed or deeds with or without power of revocation and new appointment or by his will or any codicil thereto (but subject and without prejudice to the said term of 1000 years and the trusts thereof and to the uses and estates preceding the estate of the person exercising this power and to the powers annexed to such preceding uses or estates if any such uses or estates shall be then subsisting or capable of taking effect or being exercised *And also* subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers or any of them *And also* subject and without prejudice to any jointure limited or created or which shall be limited or created by the person exercising this power)

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*Of Real Estates
in strict
Settlement.*

Amount of
rent-charges
not to exceed a
certain sum.

Power of
charging por-
tions.

No. DCXLIX.
*Of Real Estates
 in strict
 Settlement.*

to charge all or any of the manors and other hereditaments hereby devised in strict settlement with the payment of any sum or sums of money not exceeding in the different events hereinafter specified the several sums of money hereinafter mentioned as and for the portion or portions of the child or children of the person exercising this power or any one or more of them exclusively of the other or others of his children (other than or besides an eldest or only son entitled under or by virtue of this my will to the possession or to the first estate of inheritance of the same premises) (that is to say) If there shall be but one such child as aforesaid (other than or besides as aforesaid) and no more then the sum of £ And if there shall be two such children (other than or besides as aforesaid) and no more then the sum of £ And if there shall be three or more such children (other than or besides as aforesaid) then the sum of £ To be an interest vested or interests vested in and to be payable unto or between or among such child or children or any one or more exclusively of the other or others of such children at such age or time or ages or times not more remote than twenty-one years from the death of the person exercising this power in such manner And if more than one in such shares and to be subject to such powers of appointment by the person for the time being exercising this present power and to such provisions for the advancement or preferment of any such child or children at the discretion of the trustees or trustee or otherwise and to such other powers and provisoes for the benefit of such child or children or some or one of them as the person exercising this present power shall in manner aforesaid direct and by the same or any other deed or deeds or by will or codicil to charge the hereditaments and premises intended to be charged with such portion or portions respectively with the payment of any annual sum or sums of money not exceeding the interest of the sum or sums of money so to be charged as a portion or portions after the rate of £4 per centum per annum to be applied for the maintenance and education of the child or children for whom the portion or portions so to be charged as aforesaid shall be intended in the meantime and until such portion or portions shall become payable the said annual sum or annual sums of money to be free and clear of all deductions for any taxes charges assessments or impositions or any other matter cause or thing whatsoever and to commence from such period or periods and to be raised and paid in such proportions and at such time or times and in such

manner as the person for the time being exercising this present power shall in manner aforesaid direct or appoint *And I declare that for securing or providing for the raising and payment of the sum or sums of money so to be charged for a portion or portions as aforesaid and of the annual sum or sums so to be charged for maintenance and education as aforesaid it shall be lawful for the person for the time being exercising this present power (subject and without prejudice as last aforesaid) by the same or any other deed or deeds or by will or codicil to limit the hereditaments and premises so intended to be charged as aforesaid to any person or persons whomsoever for any term or terms of years upon any trusts or by way of mortgage with or without impeachment of waste so that every term or estate so to be limited as lastly hereinbefore is mentioned shall be made to cease (subject and without prejudice to any disposition which may be made under the trusts to be declared thereof by virtue of this power) or be redeemable on full payment of the principal sum or sums of money which the same shall be created or limited for securing with lawful interest for the same and also of all such yearly sum or sums (if any) as shall or may be charged under the aforesaid power for maintenance and education *Provided always* and I hereby declare that if any person hereby made tenant for life of the manors and other hereditaments hereby devised in strict settlement shall at any time or times hereafter before he shall by virtue of this my will be entitled to the possession or to the receipt of the rents issues and profits of the same hereditaments and premises shall in exercise of any power or powers herein contained in that behalf subject and charge the said last mentioned hereditaments and premises or any part or parts thereof to and with the payment of any sum or sums of money for a portion or portions or for maintenance as aforesaid then and in every such case the sum or sums of money so expressed or intended to be charged for a portion or portions or for maintenance as aforesaid shall not be a lien or charge upon the hereditaments and premises intended to be charged with the same or become vested or payable in or to any person or persons whomsoever and no interest shall be payable thereon unless and until the person or persons so charging the same hereditaments and premises with a portion or portions respectively as aforesaid or some one or more of his or their issue respectively shall under or by virtue of the limitations in this my will contained or any of them become entitled to the possession or to the receipt*

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in strict
Settlement.*

When portions
to be a charge.

No. DCXLIX. of the rents issues and profits of the same hereditaments and
Of Real Estates premises *Provided always* and I hereby declare that the
in strict manors and other hereditaments hereby devised in strict set-
Settlement. tlement or any part of them shall not under or by virtue of
Amount of por- the trusts or powers lastly hereinbefore contained be at any
tions limited. one time subject or liable to the payment of any sum or sums
of money exceeding in the whole for portions of children the
principal sum of £ and that so much of any charge
by which any excess over the said sum of £ shall be
occasioned shall not be raiseable out of the said premises and
the same portions respectively shall have priority of payment
according to priority in order of limitation of the estates of the
persons exercising the power lastly hereinbefore contained
Provided always and I declare my will to be that it shall be
Power to grant lawful for every person hereby made tenant for life of the
mining leases. manors and other hereditaments hereby devised in strict settle-
ment as and when he shall under this my will be entitled to the
possession or to the receipt of the rents and profits of the same
hereditaments and also for the said A. B. and C. D. and the
survivor of them and the executors or administrators of such
survivor during the minority of any person hereby made tenant
for life or tenant in tail male or in tail by purchase who if of
full age would under this my will be for the time being entitled
to the possession or to the receipt of the rents and profits of the
same hereditaments by any deed or deeds duly executed by him
or them to limit or appoint by way of demise or lease All or
any part of the mines quarries metals minerals coals and other
substances in under or upon the manors and other hereditaments
hereby devised in strict settlement or any of them or any part
thereof either with or without any messuages buildings lands or
hereditaments convenient to be held or occupied with the same re-
spectively and either with or without the surface of any lands in
or under which the same or any part thereof respectively shall lie
and whether the same have or have not been hitherto opened or
worked for any term of years not exceeding years to take
effect in possession with full and free liberty license power and
authority to search seek bore dig drive sink for discover work get
and raise take use and dispose of the said mines quarries metals
minerals and other substances and for those purposes to sink dig
drive and make pits staples shafts winzes drifts adits grooves
tunnels soughs leats levels trenches sluices ways gates headways
watergates gutters and other subterraneous works in or under the
said lands and premises and to erect build or construct any fur-

To do all ne-
cessary things
for working
mines.

naces steam or other engines mills gins or machineries and to use occupy maintain and amend the same in such manner as shall be necessary or expedient and to use any other lawful ways and means whatsoever as well for the finding discovering winning working getting and raising the said metals minerals and other substances forth and out of the said mines and quarries as for draining discharging and carrying away water foul air stythe and stench from forth and out of the same *And also* full and free liberty power and authority to take and use sufficient ground room heap room and pit room for laying bringing to bank stacking smelting calcining working and manufacturing the metals minerals and substances including rubbish that shall from time to time be won raised dug or gotten out of or proceed from the said mines and quarries *And also* full and sufficient ways paths and passages during the continuance of the term or terms of years so to be granted to and for the appointee or appointees lessee or lessees from time to time to take lead and carry away with cattle carts wains waggons and other carriages all the metals minerals and other substances which shall from time to time be won or gotten forth or out of the said mines and quarries *And also* full and free liberty power and authority to make cut lay down use and occupy such waggonways railways canals bridges or other ways as shall be necessary or convenient for taking leading and carrying away such metals minerals and other substances and to erect build and set up use and occupy in any convenient place or places near any of the said mines or quarries all such dwelling houses for workmen *And also* all such other houses hovels sheds buildings furnaces foundries forges mills engines machines or other erections as shall from time to time be needful or convenient for the abodes of the workmen or for the standing laying and placing any workmen horses utensils or materials to be employed or used in or about the working of the said mines and quarries respectively or for working and carrying on such mines quarries or manufactures and to amend and repair the same as occasion shall require *And also* to dig or get up stone sods peat clay or soil for erecting building and repairing such houses and other buildings and to do whatsoever else shall be deemed needful or requisite in about or for the winning working digging for obtaining washing cleansing and smelting of such metals minerals and other substances and for the manufacturing taking and carrying away the same *And* either with or with-

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No. DCXLIX. out full license and authority to and for every such appointee or
Of Real Estates lessee his executors administrators or assigns from time to time
in strict to take down remove and carry away all or any of the said steam
Settlement. and other engines furnaces forges foundries and other erections
 With or with- railways and other ways mills gins and other machineries so that
 out license for lessee to take away erections, &c.
 Best rent, &c. reserved and made payable during the continuance of the estate
 to be reserved. or interest thereby created the best and most improved yearly
 rent or rents tolls duties royalties and reservations that can under
 the circumstances of the case be reasonably had or gotten
 for the same to be incident to the immediate reversion of the
 hereditaments and premises comprised in such appointment by
 way of demise or lease without taking any fine premium or
 foregift for the making thereof and so that there be contained
 therein a condition of re-entry in case of the nonpayment of the
 rent or rents tolls royalties duties or reservations to be thereby
 reserved within forty days after the same shall become due
And so that the respective appointee or appointees or lessee or
 lessees to be named in any such appointment or appointments
 by way of demise or lease shall execute a counterpart or coun-
 terparts thereof respectively and shall thereby covenant for the
 due and punctual rendering and paying the rent or rents tolls
 duties royalties and reservations to be thereby respectively re-
 served and also enter into such covenants and agreements for
 the working and managing of the said mines quarries and works
 as are in the like cases usual or as the person or persons making
 such appointment or appointments by way of demise or lease
 shall deem proper and reasonable [*And* I declare that it shall
 be lawful in and by any such appointment by way of demise or
 lease to reserve any annual sum of money by way of mine rent
 and also in case it shall appear at the expiration of any year of
 the term so appointed upon calculation of the extent to which
 the working of the mines to be thereby so appointed shall then
 have actually proceeded (the extent of the working of the said
 mines if more than one to be thereby so appointed being com-
 puted upon any average to be agreed upon and to be therein
 specified) that the said mines shall have been worked or gotten
 out of or from any greater quantity or extent of the surface of
 any lands than such quantity or extent of land in the whole as
 shall be for the time elapsed previously to the time of making
 such calculation as aforesaid after some fixed rate and propor-
 tion by the year to be specified in such appointment by way of
 demise or lease in superficial measure then and in every such

Lessees to
 covenant to
 pay rent and
 work mines
 properly.

Power to re-
 serve mine rent
 with additional
 sum per acre.

case (over and besides the yearly sum by way of mine rent to be reserved as aforesaid) to reserve an additional mine rent for each and every statute acre in superficial measure and so in proportion for every less quantity than a statute acre of the surface of any lands out of or from which the said mines shall have been so worked or gotten as aforesaid over and above such quantity or extent in the whole of the said lands as shall be after the rate and proportion so to be specified in superficial measure for the time elapsed previously to the time of making such calculation as aforesaid the said additional mine rent to be payable upon such day in every year of the term so appointed wherein such additional mine rent shall actually arise or accrue as shall be specified in such appointment by way of demise or lease with a proviso that when and so often as any additional mine rent shall have become due at the expiration of any year of the term so appointed in consequence of the said mines having been worked or gotten out of or from any surplus quantity of any lands exceeding the quantity to be in that behalf specified as aforesaid for the time previously elapsed as aforesaid and the same shall have been actually paid in pursuance of the reservation aforesaid then and thenceforth and so often as the case shall arise the surplus quantity of the said lands in respect of which such additional mine rent shall have so arisen and been actually paid as aforesaid shall not in any future calculation to be made at the expiration of any subsequent year of the said term so appointed for the purpose of ascertaining whether additional mine rent shall have again become due be again brought into consideration so as to render any further mine rent again payable for or in respect of the same] *Provided always* &c. [See *Commencement*, ante, p. 1552. *Power to grant Building Leases*, see ante, p. 1385] *Provided always* &c. [See *Commencement*, ante, p. 1552. *Power to grant Leases at Rack Rent*, see ante, p. 1386] *Provided always* and I hereby declare my will to be that it shall be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor during the life of any person hereby made tenant for life who shall under this my will be for the time being entitled to the possession or to the receipt of the rents and profits of the said manors and other hereditaments hereinbefore devised in strict settlement

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*Power to grant
licences to
copyholders (a)*

(a) See 1 Davidson's Conv. pp. 379, 380, 2nd ed.

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 Settlement.*

with his consent in writing if he shall be of full age and also during the minority of any person hereby made tenant for life or tenant in tail male or in tail by purchase who shall or if of full age would for the time being be entitled to the possession or to the receipt of the rents and profits of the same manors and hereditaments at the discretion of the said A. B. and C. D. or the survivor of them or of the executors or administrators of such survivor to grant to any copyhold or customary tenant or tenants of any tenement holden of any manor for the time being subject to the then subsisting uses of this my will a licence in writing to build on or otherwise improve all or any part of his or their tenements and to make roads and streets in upon or through the same and to annex the same or any part thereof to adjacent ground for the purpose of improvement and to pull down any of the messuages or erections which are now or hereafter shall be on such tenements and demise all or any part of his or their tenements for any term of years not exceeding twenty-one years (or for building rebuilding or repairing purposes for any term of years not exceeding ninety-nine years) to commence from the time of granting such licence or for any one or more of the purposes aforesaid *And also* to fix the sum which during the term mentioned in such licence shall be considered as the annual value for assessing the fines payable to the lord upon admission of any new tenant to any tenements which shall have been built on or improved or for the building on and improving of which such licence shall be or shall have been granted so that the sum to be fixed shall not be less than the best annual rent which might at the date of such licence be reasonably obtained on a demise of the premises therein mentioned for the term mentioned in such licence *Provided always* that no fine premium or foregift shall be taken for the making or granting any such licence except the customary annual fine (if any) for every year of the term mentioned in such licence and such fees as shall be usual or reasonable in that behalf And that upon the grant of every such licence there shall be reserved to the lord of the manor all fines heriots rents customs and services due and to grow due in respect of the tenements in respect of which such licence shall be granted and that every such licence shall be entered on the court rolls or court books of the manor *Provided always* and I hereby declare that it shall be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of

Powers of sale
 and exchange
 and enfran-
 chisement.

such survivor at any time or times hereafter during the life of No. DCXLIX.
 any person hereby made tenant for life who shall under this my *Of Real Estates*
 will be for the time being entitled to the possession or to the *in strict*
 receipt of the rents and profits of the said manors and other here- *Settlement.*
 ditaments hereby devised in strict settlement with his consent in
 writing if he shall be of full age *And also* during the minority of
 any person hereby made tenant for life or tenant in tail male or in
 tail by purchase who shall or if of full age would for the time
 being be entitled to the possession or to the receipt of the rents
 and profits of the same premises at the discretion of them the
 said A. B. and C. D. or of the survivor of them or of the exe-
 cutors or administrators of such survivor to dispose of and con-
 vey either by way of absolute sale or in exchange for or in lieu
 of other manors lands or hereditaments to be situate somewhere
 in that part of Great Britain called England or in the principality
 of Wales all or any part of the manors and other hereditaments
 and premises hereby devised in strict settlement and the inheri-
 tance thereof in fee simple to any person or persons whomsoever
 for such price or prices in money or for such an equivalent or
 recompense in manors lands or hereditaments as to them the
 said A. B. and C. D. or the survivor of them or the executors
 or administrators of such survivor shall seem reasonable or to
 enfranchise any copyhold or customary messuages lands or here-
 ditaments holden of any of the said manors hereby devised in
 strict settlement for such price or prices or sum or sums of money
 as to the said A. B. and C. D. or the survivor of them or the
 executors or administrators of such survivor shall seem reason-
 able and that for the purpose of effectuating such dispositions
 conveyances enfranchisement or enfranchisements (but not for
 any other purpose) it shall and may be lawful for the said
 A. B. and C. D. and the survivor of them and the exe-
 cutors or administrators of such survivor with such consent
 or at such discretion as aforesaid by any deed or deeds
 instrument or instruments in writing sealed and delivered
 by them or him in the presence of and attested by two
 or more credible witnesses absolutely to revoke determine
 and make void all and every or any of the uses trusts
 powers and provisoes hereinbefore limited and declared or to be
 limited or declared under the powers hereinbefore contained of
 jointuring or charging portions of and concerning the said pre-
 mises or any part or parts thereof but subject and without pre-
 judice to any mortgage or other disposition which may have
 been made under the trusts of the said term of 1000 years or

Power to
 revoke old and
 declare new
 uses.

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 Settlement.*

under the trusts of any term of years to be limited under the aforesaid powers of jointuring and charging portions and to any lease which may have been granted under any of the powers of leasing hereinbefore contained *And* by the same or any other deed or deeds instrument or instruments in writing sealed delivered and attested as aforesaid to limit declare direct and appoint any use or uses estate or estates trust or trusts of the said premises or any part or parts parcel or parcels thereof which it shall be thought necessary or expedient to limit declare direct or appoint in order to effectuate such sales exchanges dispositions conveyances or enfranchisements as aforesaid *And also* that upon any such exchange as aforesaid it shall and may be lawful for the said A. B. and C. D. or the survivor of them or the executors or administrators of such survivor to give or receive any sum or sums of money by way of equality of exchange *And* I declare that any such sale as aforesaid may be made either by public auction or by private contract and that the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor shall have full power to insert any such special stipulations as to title or evidence of title or otherwise in any conditions of sale or contract for sale or enfranchisement or exchange of the said premises or any part thereof as they or he shall think fit and to buy in or rescind any contract for sale of the same premises or any part thereof without being responsible for any loss occasioned thereby [*And* I declare that upon payment of the money arising by any sale or enfranchisement of the said premises or any part thereof or to be received for equality of exchange as aforesaid or any part thereof it shall and may be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor to sign and give receipts for the same *And* that such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money therein respectively acknowledged or expressed to be received *And* that such person or persons his her or their heirs executors administrators or assigns shall not afterwards be answerable for any loss misapplication or nonapplication of such money or be obliged or concerned to see to the application thereof (a)] *And* I hereby declare that when all

Trustees' receipts sufficient discharges.

(a) The clause within brackets may be omitted where the will contains, as it ought to do, the general clause making the receipts of trustees valid discharges.

or any part or parcel of the manors and other hereditaments hereby devised in strict settlement shall be so sold for a valuable consideration in money or any such copyhold or customary messuages lands or tenements shall be so enfranchised or any money shall be so received for equality of exchange as aforesaid they the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor shall with all convenient speed lay out and invest the money to arise by such sale or sales enfranchisement or enfranchisements or to be received for equality of exchange in the purchase of other manors lands or hereditaments in fee simple in possession to be situate somewhere in that part of Great Britain called England or in the principality of Wales of a clear and indefeasible estate of inheritance or of lands of a leasehold or copyhold tenure convenient to be held therewith or with the hereditaments hereby devised in strict settlement yet so that during the life of any person hereby made tenant for life who shall for the time being be entitled as aforesaid and shall be of full age every such purchase shall be made with his consent testified by some writing under his hand And I hereby declare that they the said A. B. and C. D. or the survivor of them or the heirs executors administrators and assigns of such survivor do and shall settle and assure or cause to be settled and assured as well the manors lands and hereditaments so to be purchased as the manors lands and hereditaments to be vested in the said A. B. and C. D. or the survivor of them his heirs executors administrators or assigns in exchange as hereinbefore is mentioned To the uses upon the trusts and for the intents and purposes and with under and subject to the powers provisoes limitations and declarations in and by this my will expressed declared and contained or which shall have been limited or created under any of the powers hereinbefore contained of and concerning the manors and other hereditaments hereby devised in strict settlement or such of them as shall be so sold enfranchised or conveyed in exchange as aforesaid or as near thereto as the nature or quality of the lands so to be purchased and the deaths of parties and other circumstances will then admit of but so as not to increase or multiply charges and so that if any of the lands or tenements so to be purchased shall be held by lease or leases for years the same shall not for the effect or purpose of transmission vest absolutely in any person hereby made tenant in tail male or in

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Settlement.*

Trusts of
money received
under exercise
of power.

Directions to
settle lands to
be purchased.

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Provision for
renewal of
leases.

Power for trust-
tees to raise
money by
mortgage.

effectuating any such mortgage or mortgages *And* no mortgagee advancing money upon any mortgage purporting to be made under this power shall be bound to see such money is wanted or that no more than is wanted is raised *Provided also* and I hereby declare that it shall be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor upon the request of any person hereby made tenant for life who shall for the time being be entitled as aforesaid and shall be of full age or if there shall be no person for the time being so entitled as aforesaid and of full age then at their or his own discretion to apply any money to arise by any such sale or enfranchisement or exchange as aforesaid in or towards paying off or discharging any mortgage or other charge or incumbrance for the time being affecting all or any of the hereditaments then subject to the then subsisting uses or trusts of this my will but without changing or altering the equities or obligations of the parties claiming under this my will as to defraying the fines and expenses of such renewals of leases or grants as aforesaid *And* I hereby declare that until the money arising by such sale or sales enfranchisement or enfranchisements or to be received for equality of exchange as aforesaid shall be invested or disposed of in the manner hereinbefore directed it shall and may be lawful for the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor with such consent or at such discretion as last aforesaid to place out such money at interest either in the parliamentary stocks or public funds of Great Britain or in government or real securities in England but not on real or other securities in Ireland *And also* from time to time with such consent or at such discretion as aforesaid to alter vary and transpose such stocks funds securities into or for other stocks funds and securities of the same or a like nature and I declare that the dividends interest and annual proceeds which shall from time to time arise by or in respect of such money so to be invested or by or in respect of any other sum or sums of money which shall come to the hands of the said trustees or any of them by any alteration or transposition of such securities or funds as aforesaid shall go and be payable and paid to such person or persons and be applied to and for such uses intents and purposes and in such manner as the rents and profits of the lands and tenements to be purchased therewith would go and be payable or applicable in case such purchase or purchases and settlements was or were

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Settlement.*

Power for trustees to discharge incumbrances.

Until purchases, money to be invested.

To alter securities.

Income of funds to go as rents of lands to be purchased.

No. DCXLIX. *Of Real Estates in strict Settlement.* actually made *And I give* and devise all the copyhold or customary messuages farms lands tenements and hereditaments whatsoever and wheresoever of or to which I or any person or persons in trust for me am is or are seised or entitled for any estate of inheritance in possession remainder reversion or expectancy or which I have power by this my will to dispose of with their and every of their appurtenances and all the estate right title and interest therein respectively unto the said A. B. and C. D. and their heirs Upon and for such trusts intents and purposes and with under and subject to such powers provisoes and declarations as shall or may as nearly correspond with and be similar to the uses trusts intents purposes powers provisoes and declarations hereinbefore limited expressed and declared of and concerning the manors and freehold hereditaments hereinbefore devised in strict settlement as the different natures and tenures of the same premises respectively and the rules of law and equity will admit of but not so as to increase or multiply charges

Devise of copyholds upon trusts corresponding with freeholds. *And I give* devise and bequeath all the leasehold messuages farms lands tenements and hereditaments whatsoever and wheresoever whether holden for any life or lives or for any term or terms of years either absolute or determinable with any life or lives under any lease or leases or otherwise howsoever of or to which I am or at my death shall be seised possessed or entitled or of which I have or at my death shall have power to dispose by will unto and to the use of the said A. B. and C. D. and their heirs executors administrators and assigns for all such estate term and interest as I shall have therein respectively at the time of my decease and according to the nature and quality of the same premises respectively *Upon trust* in the first place that they the said A. B. and C. D. and the survivor of them and the heirs executors administrators and assigns of such survivor do and shall by with and out of the rents and profits thereof yearly and every year and at all other times duly pay and perform the several rents and covenants which are reserved or contained in any lease or leases which at the time of my decease shall be subsisting of or in the same premises respectively or which in and by any renewed lease or leases thereof from time to time shall be reserved and contained and which on the part of the lessees ought to be paid and performed *And upon* this further trust that they the said A. B. and C. D. the survivor of them and the heirs executors administrators and assigns of such survivor do and shall from time to time renew or use their or his endcavours to renew the sub-

Devise of leaseholds.

Upon trust to pay rents and perform covenants.

And endeavour to effect renewals.

sisting lease or leases for the time being of such of the same premises as are or shall be held under any lease or leases for lives or years usually renewable when and so often as any of the lives for which the same respectively are or shall be granted or held shall drop or the usual course of renewal of such leases respectively shall require and shall from time to time make and do all such surrenders and other things as shall be expedient for obtaining such renewals (a) And do and shall raise and pay the fines and other charges and expenses of such renewal or renewals by and out of the rents issues and profits of the same premises or by mortgage thereof [*Trustees not to be answerable for neglect, see ante, p. 1393*] And I hereby declare my will to be that subject to the aforesaid trust for renewal the said A. B. and C. D. and the survivor of them and the heirs ex-

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Upon same
trusts as free-
holds.

(a) Where provision is made for insuring the lives of the *cestuis que vie*, the following clauses will apply, "And for the purposes aforesaid do and shall out of the rents and profits of the said leasehold premises effect and keep on foot insurances on the lives of the respective *cestuis que vie* named in such of the subsisting leases for the time being of the said leasehold premises as shall be held for lives or years determinable on lives or on the lives of such of the *cestuis que vie* as shall be insurable at reasonable premiums and I direct that the money to be insured on each life shall amount to such sum or sums as in the opinion of the said trustees or trustee for the time being of the said leasehold premises shall be sufficient to enable them or him whenever any such life shall drop or fall to effect a renewal of the subsisting lease in which such life shall have been named a *cestui que vie* And do and shall apply the money to be from time to time received on the dropping or falling of any such life in effecting a renewal of the subsisting lease in which such life shall have been named a *cestui que vie* And do and shall pay the surplus of such money (if any) to the person who under the trusts hereinafter declared shall for the time being be in the possession of the said leasehold premises or beneficially entitled to the rents and profits thereof And do and shall out of the rents and profits of the said leasehold premises or by mortgage thereof or of any part thereof raise money sufficient to effect the renewal of any of the subsisting leases of the said premises for the time being when and so often as a renewal shall be advisable or necessary and when from the not insuring or from the insufficiency of the money arising from any such insurance as aforesaid or from any other cause there shall be no other funds or insufficient funds for the purpose And do and shall apply the money to be so raised in or towards effecting such renewal or renewals accordingly but no mortgagee advancing money under this power shall be bound to see that it is wanted or that no more than is wanted is raised And for the purpose of effecting the renewal hereinbefore directed to be made the said trustees or trustee for the time being of the said leasehold premises do and shall from time to time surrender the subsisting leases and accept new leases and do and shall execute all such other acts and deeds as shall be necessary And I declare &c." (as above.)

Trust to in-
sure lives of
cestuis que vie.

To apply
money in
effecting
renewal;
and surplus to
person entitled
to the pre-
mises.
Out of rents to
raise sufficient
to renew;

and apply
money in
effecting re-
newals.
To surrender
and accept
leases.

No. DCXLIX. *Of Real Estates in strict Settlement.* executors administrators and assigns respectively of such survivor shall stand and be seised and possessed of and interested in the said hereditaments lastly hereinbefore devised and bequeathed Upon and for such trusts intents and purposes and with under and subject to such powers provisoes and declarations as shall or may best correspond with and be similar to the uses trusts powers provisoes and declarations hereinbefore expressed and contained of and concerning the manors and other hereditaments hereinbefore devised in strict settlement as nearly as the different natures and qualities of the estate in the same premises respectively and the rules of law and equity will permit but not so as to increase or multiply charges and so that no parts of such of the same hereditaments as are or shall be holden for any term or terms for years absolute or for any term and terms of years determinable upon any life or lives shall for the purpose of transmission vest absolutely in any tenant in tail male or in tail taking by purchase the said manors and other hereditaments hereinbefore devised in strict settlement under the limitations hereinbefore contained unless such person shall attain the age of twenty-one years or shall die under that age leaving issue living at his decease or born in due time afterwards and which issue shall under this my will be entitled to the possession or to the receipt of the rents and profits of the manors and freehold hereditaments hereby devised in strict settlement *And I give* and bequeath all my pictures prints books jewels china household goods and furniture and works of art which at my decease shall be in or about my capital messuage or mansion house at aforesaid unto the said A. B. and C. D. their executors administrators and assigns *In trust* to permit the same to go along with and to be used and enjoyed with my said mansion house so far as the rules of law and equity will permit by the person who under or by virtue of the limitations hereinbefore contained shall for the time being be in the actual possession or entitled to the receipt of the rents issues and profits of my said manors and other hereditaments hereby devised in strict settlement yet so that the same shall not vest absolutely in any person hereby made tenant in tail male or in tail by purchase of my said manors and other hereditaments unless such person shall attain the age of twenty-one years or die under that age leaving issue of his body living at his decease or born in due time afterwards and which issue shall be entitled under this my will to the possession or to the receipt of the rents and profits of the manors and other here-

Proviso that premises shall not vest for purpose of transmission until person attain twenty-one.

Bequest of personal effects to be enjoyed as heir-looms.

ditaments hereby devised in strict settlement *And* I direct that an inventory shall be made of the said pictures prints books jewels plate china household goods and furniture and works of art as soon as may be after my decease *And* that two copies shall be made of the same and each of them shall be signed by the person for the time being in possession under the limitations aforesaid and by the trustees or trustee for the time being of this my will *And* that the said trustees or trustee for the time being shall see that the said pictures prints books jewels plate china household goods and furniture and works of art are adequately insured against loss or damage by fire as far as practicable and properly preserved at the expense of the usufructuary thereof for the time being but nevertheless the fashion and form of the said plate and jewels may from time to time be altered the intrinsic value thereof being kept up allowance being made for reasonable wear and tear (a) *And* I declare that the said trustees or any of them shall not be answerable for the loss damage or destruction of any of the said articles or on account of the same not being insured or on account of the money received in respect of any insurance not being applied in replacing or repairing the same [*Bequest of some pecuniary legacies*] *And* I do hereby give and bequeath unto my said son A. his executors administrators and assigns all the rest and residue of my personal estate whatsoever and wheresoever not hereinbefore specifically disposed of and which shall remain after payment of my debts legacies and funeral and testamentary expenses *And* I do hereby nominate and appoint my said son A. sole executor of this my

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*Of Real Estates
in strict
Settlement.*

Directions to
make inven-
tory of heir-
looms.

Bequest of
residue of per-
sonal estate.

(a) *And* I hereby direct that the said A. B. and C. D. and the survivor of them his executors or administrators do and shall from time to time examine the state and condition of the said furniture books plate pictures glass and effects and cause such reparations and restorations to be made of and in the same as they or he shall judge reasonable and the expense of which shall be defrayed by the person or persons for the time being entitled to the use thereof under the trusts of this my will *And* I do hereby further direct that the said A. B. and C. D. and the survivor of them and the executors or administrators of such survivor do and shall from time to time at the request in writing and at the expense of the person or persons for the time being entitled to the use thereof exchange the said furniture plate and effects or any part thereof for any other articles of equal or greater value *And* do and shall permit the said furniture plate and other effects or any part thereof to be from time to time altered by the usufructuary thereof as he or they shall think fit provided the same be not diminished in value by any such alteration and the expense thereof be borne by the person or persons causing the same to be made.

Power to the
trustees to re-
pair the furni-
ture, &c.

Power to trust-
ees to ex-
change the
furniture.

Power to per-
mit furniture to
be altered.

No. DCXLIX. will *And I give* devise and bequeath all the estates which at the time of my death shall be vested in me upon any trusts or by way of mortgage and of which I shall at my death have power to dispose of by will unto the said A. my son his heirs executors and administrators respectively according to the nature thereof respectively *Upon the trusts* and subject to the equity of redemption which at my death shall be subsisting or capable of taking effect therein respectively but so that the money received on such mortgages be taken as part of my personal estate *Provided always* and I hereby declare that &c. [*Declaration that receipts of trustees shall be sufficient discharges, ante, p. 1396*] *Provided always* and I hereby declare my will to be that if the trustees hereby appointed or any or either of them shall die in my lifetime or shall on my decease renounce or disclaim the trusts of this my will or in case after my decease the trustees hereby appointed or any or either of them or any trustee or trustees to be appointed as hereinafter is mentioned shall die or go to reside abroad or desire to be discharged from or decline or become incapable to act in the trusts hereby reposed in him or them respectively then and so often as it shall so happen it shall be lawful for the surviving or continuing trustees or trustee of the trust estates monies and premises the trustee or trustees whereof shall so die disclaim go to reside abroad or desire to be discharged or decline or become incapable to act (and for this purpose a disclaiming refusing or retiring trustee if willing to act in the execution of this power shall be considered a continuing trustee) or for the acting executors or administrators of the last surviving or continuing trustee of the same premises respectively with the consent in writing of the person who under the limitations hereinbefore contained shall for the time being be tenant for life or tenant in tail male or in tail by purchase and entitled to the possession or to the receipt of the rents and profits of the manors and other hereditaments hereinbefore devised in strict settlement if such person shall be of the age of twenty-one years but if such person shall be under the age of twenty-one years then at the proper discretion and authority of such surviving or continuing trustee or of the executors or administrators of such last surviving or continuing or acting trustee by any deed duly executed by them or him to appoint one or more person or persons to be a trustee or trustees in the place of the trustee so dying disclaiming going to reside abroad or refusing or declining or becoming incapable to act as aforesaid

*Of Real Estates
in strict
Settlement.*

Devise of trust
and mortgage
estates.

Power to ap-
point new
trustees.

And that upon every such appointment the trust estates monies and premises (if any) which shall be then vested in the trustee or trustees so dying going to reside abroad or refusing or declining or becoming incapable to act as aforesaid either solely or jointly with the surviving or continuing trustee of the same respectively or in the surviving trustee of the same respectively or in the heirs executors or administrators of the last surviving trustee of the same respectively (as the case may be) shall be conveyed assigned and transferred so and in such manner that the same may become vested in the surviving or continuing trustee of the same respectively jointly with such new trustee or in such new trustee or trustees solely (as the case may require) and that every trustee so appointed as aforesaid may either before or after the said trust premises shall have been so vested as aforesaid act or assist in the execution of the trusts and powers in respect of which he shall be so appointed a trustee as fully and effectually and with the same powers authorities and discretion as if he had been originally nominated a trustee in this my will *Provided also* and I hereby declare that the several trustees hereby appointed or to be hereafter appointed by virtue of the power lastly hereinbefore contained shall be charged or chargeable only with or for such monies stocks funds and securities as they shall respectively actually receive by virtue of the trusts in them hereby reposed notwithstanding they or any of them shall join in any receipt for the sake of conformity And that any one of them shall not be answerable or accountable for the other or others of them or for the acts receipts neglects or defaults of the other or others of them but each only for his or their own acts receipts neglects and defaults and that they or any of them shall not be answerable for any banker broker or other person with whom any trust monies or securities may be deposited nor for the insufficiency or deficiency of any stocks funds or securities nor for any other loss unless the same shall happen through their own wilful default respectively *And also* that it shall be lawful for them with and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid to retain to and reimburse himself or themselves respectively and allow to his or their co-trustee or co-trustees or pay and discharge out of the said trust premises all such costs charges and expenses as they or any of them shall or may respectively sustain expend or be put unto in or about the execution of the trusts in them respectively hereby reposed or in

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*Of Real Estates
in strict
Settlement.*

Indemnity to
trustees.

Trustees to re-
imburse them-
selves. •

No. DCXLIX. *Of Real Estates in strict Settlement.* anywise relating thereto *Provided always* and I hereby declare that the said (*trustee*) and every future trustee of this my will who shall be a solicitor or attorney may act as solicitor and attorney to my estate and shall be entitled to charge and shall be paid for all business done by him as a solicitor or attorney in respect of my estate in the same manner as if he had not been a trustee of this my will (*a*) And I also appoint the said A. B. and C. D. and the survivor of them the guardians or guardian of the persons and estates of all such of my children as shall be under age at the time of my decease during their respective minorities And I revoke all former and other wills by me at any time heretofore made and declare this only to be my last will and testament In witness whereof I W. M. have to two parts of this my last will and testament each part contained in sheets of paper set my hand and seal namely to the first sheets of each part my hand and to the and last sheets of each part my hand and seal the day of in the year of our Lord 18

W. M. (L.S.)

Signed and declared by the said testator as and for his last will and testament in the presence of us present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses

R. C. of &c. }
G. F. of &c. } [*Two witnesses.*]

(a) See *ante*, p. 1435, n.

No. DCL.

Devise of Freehold Estates to Trustees to sell. Authority to sell Copyhold Estates. Residuary Bequest of Personal Estate to convert and to invest produce of Estates on Real or Government Securities. Interest to Testator's Wife for Life, then to Testator's Children, as Wife shall appoint, with usual Clauses. Gift over to Testator's Brothers and Sisters, on failure of preceding Trusts. Power to appoint New Trustees, &c. Power to compromise Claims.

No. DCL.

Of Real and Personal Estates upon Trusts for Wife and Children.

This is the last will and testament of me W. X. of &c. I give and devise all and every the freehold messuages lands tenements and hereditaments of or to which I am or at my decease shall be seised or entitled at law or in equity or of which I have or at my death shall have power to dispose by will unto and to the use of A. B. of &c. and C. D. of &c. their heirs and assigns for ever Upon trust that they my said trustees or the survivor of them or the heirs and assigns of such survivor do and shall as soon as conveniently can be after my decease absolutely sell and dispose of the said freehold messuages lands and hereditaments either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract as to them or him shall seem meet to any person or persons who shall be willing to become the purchaser or purchasers thereof for the most money that can be reasonably obtained for the same And I authorize empower and direct the said A. B. and C. D. and the survivor of them and the heirs and assigns of such survivor as soon as conveniently can be after my decease in like manner as aforesaid to bargain sell and dispose of all and every the copyhold messuages lands tenements and hereditaments of or to which I am or at my decease shall be seised or entitled at law or in equity or of which I have or at my death shall have power to dispose by will either with the said freehold hereditaments hereinbefore devised or separately for the most money that can be reasonably obtained for the same and with power to buy in and to rescind any contract for sale of the said freehold and

Devise of freehold estates to trustees for sale.

Trustees are authorized to sell copyholds (a).

(a) An authority only is given to the trustees to sell the copyholds to supersede the necessity of their being admitted, which, when the copyholds are subject to fines arbitrary, is a matter of some importance. See *ante*, p. 450, *Obs.*

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copyhold premises or any of them or any part or parts thereof respectively at any sale or sales by auction and to resell the same without being liable for any loss which may be occasioned thereby and also with power to insert any special or other stipulations in any contract for or conditions of sale either as to title or evidence of title or otherwise And for effectuating the several sales hereinbefore by me directed to be made I authorize my said trustees and the survivor of them and his heirs and assigns to enter into make pass and execute all such contracts conveyances bargains sales surrenders and assurances acts and deeds as shall be necessary for conveying surrendering and assuring the said freehold and copyhold messuages lands and hereditaments or any part or parts thereof unto and to the use of the purchaser or purchasers thereof his her or their heirs and assigns or as he she or they shall direct *And I declare my will to be that all the monies arising from the several sales hereinbefore by me directed to be made and the rents issues and profits of the same hereditaments in the meantime and until the same shall be sold and conveyed (a) after payment of all the costs charges and expenses attending the making and completing the sales thereof shall be deemed part of my personal estate hereinafter bequeathed [If the will does not contain, as it ought to do, a general declaration that the receipts of trustees for all monies payable to them shall be good discharges, a receipt clause should be added here] I bequeath all my plate linen china glass books pictures prints wines liquors furniture and other household effects whatsoever to my dear wife [] absolutely And I bequeath to her the sum of £ sterling which I direct to be paid to her within six calendar months from the day of my decease And I bequeath the sum of £ sterling to hospital to be paid exclusively out of my pure personal estate free from legacy duty which I direct also to be paid out of my pure personal estate And I direct that the same respectively shall be paid in preference to every other legacy bequeathed by this my will or to be bequeathed by any codicil or codicils thereto And I declare that the receipt of the treasurer for the*

Bequest of
 plate, &c. and
 pecuniary
 legacy to wife.

Legacy to
 charity (b).

(a) As an immediate sale is contemplated by this will, it is considered unnecessary to give the trustees a power of leasing, (see *ante*, p. 1404,) or to insert a fuller declaration that until sale the rents of the estates shall be applied as the income of the purchase monies would be applicable, *ante*, p. 1414.

(b) As to gifts to charities, see *ante*, pp. 1519—1521.

time being of the said hospital shall be an effectual discharge for the said legacy *And I give and bequeath* all the residue of the money securities for money goods chattels rights credits and other personal estate whatsoever and wheresoever of or to which I am now or at the time of my death shall or may be possessed or entitled at law or in equity for any interest which can be bequeathed by will or of which I have power to dispose by this my will not otherwise bequeathed or disposed of by this my will or any codicil hereto *Upon trust* that they the said A. B. and C. D. and the survivor of them his executors and administrators do and shall as soon as conveniently may be after my death call in sell dispose of and convert into money all such and so many and such part and parts of the said money securities for money goods chattels rights credits and other personal estate as shall not consist of ready money parliamentary stocks or public funds of Great Britain or government securities or mortgages upon real estates and do and shall stand and be possessed of and interested in the money to arise from such calling in sale disposition and conversion into money and of and in the ready money of or to which I shall be possessed or entitled at the time of my decease upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared *And I hereby declare* my will to be that the said A. B. and C. D. and the survivor his heirs executors and administrators shall stand possessed of and interested in the money to arise from the sale or sales of the messuages lands tenements hereditaments and real estates hereby directed to be sold and from the calling in sale disposition and conversion into money of all such and so many and such part and parts as are hereinbefore directed to be called in sold disposed of and converted into money of my said money securities for money goods chattels rights credits and other personal estate lastly hereinbefore bequeathed and of the said ready money of which I shall be possessed at the time of my decease upon trust by and out of the same to pay and discharge my funeral and testamentary expenses debts and legacies and the costs and expenses to be incurred in or about such sale or sales calling in disposition or conversion into money as aforesaid or otherwise in or about the execution of the trusts aforesaid or in relation thereto and do and shall lay out and invest the surplus or residue thereof as shall not consist of such stocks or funds or real or government securities as aforesaid in the name or names of

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upon Trusts for
Wife and
Children.*

Residuary be-
quest and trust
for conversion.

Trust for pay-
ment of debts
and expenses.

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 upon Trusts for
 Wife and
 Children.*

them the said A. B. and C. D. or the survivor of them or the executors administrators or assigns of such survivor in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England but not upon real securities in Ireland (a) And do and shall from time to time with the consent in writing of my said wife during her life and after her decease at their or his discretion alter vary and transpose the same stocks funds and securities *And also* the surplus of such stocks funds and securities as I shall die possessed of as aforesaid into or for other stocks funds and securities of a like nature And I declare my will and mind to be that the said A. B. and C. D. and the survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in all and singular the said last mentioned trust monies stocks funds and securities *In trust* that they my said trustees or the trustees or trustee for the time being of this my will do and shall pay unto my said wife and her assigns the interest dividends and annual proceeds of the said trust monies stocks funds and securities for and during the term of her natural life to and for her and their own use and benefit (b) *And* from and after the decease of my said wife *Upon trust* that my said trustees or the trustees

(a) See *ante*, pp. 1411, 1420, as to other securities.

Dividends to
 wife for life if
 she continue a
 widow, if not a
 less sum.

(b) [*Variations depending upon second marriage of wife.*] *Upon trust* that my said trustees or the trustees or trustee for the time being do and shall pay the interest dividends and annual proceeds of the said trust monies stocks funds and securities to or permit the same to be received by my said wife during her life for her own use and benefit if she shall so long continue my widow But if my said wife shall happen to marry after my decease then that my trustees or the trustees or trustee for the time being do and shall after such marriage out of the interest dividends and annual proceeds of such trust monies stocks funds and securities levy and raise the sum of £ and pay the same to my said wife or her assigns during the remainder of her life by two equal half-yearly payments on the day of and the day of

Trust to pay
 annual sum to
 wife during
 widowhood.

the first of such last-mentioned payments to commence and be made at the expiration of six calendar months after such marriage *or Upon trust* that they the said trustees and the survivor of them and the executors administrators and assigns of such survivor do and shall during such time as my said wife shall continue unmarried with and out of the interest dividends and annual proceeds of the said trust monies stocks funds and securities levy and raise the annual sum of £ sterling and pay the same to my said wife or her assigns by two equal half-yearly payments on the day of and the day of the first payment thereof to commence and be made at the expiration of three calendar months after my decease But if my said wife shall

or trustee for the time being of this my will do and shall stand and be possessed of and interested in the said trust monies stocks funds and securities and the interest dividends and annual proceeds thereof *Upon trust* for all and every or such one or more exclusively of the other or others of my children by my said wife living at my decease or born in due time afterwards and in such shares and proportions manner and form as my said wife shall whether covert or sole by any deed or deeds or writing or writings with or without power of revocation and new appointment to be by her duly sealed and delivered or by her will in writing or any codicil thereto or by any writing purporting to be her will or a codicil thereto to be by her duly signed and attested shall direct or appoint and for want of such direction or appointment or so far as any such direction or appointment if incomplete shall not extend Then in trust for all and every my children and child by my said wife living at my decease or born in due time afterwards who being a son or sons shall then have attained the age of twenty-one years or shall depart this life under that age leaving lawful issue living at the time of his or their respective decease or born in due time afterwards or who being a daughter or daughters shall then have attained or shall thereafter attain the age of twenty-one years or shall have married or shall thereafter marry under that age equally to be divided between or amongst all such children (if more than one) as tenants in common and their respective executors administrators or assigns to and for their respective use and benefit and if there shall be but one such child then in trust for such child his or her executors administrators or assigns to and for his and their own use and benefit to be paid assigned or transferred on or at the same ages days and times respectively unless the same shall have happened in the lifetime of my said wife and then and in such case immediately after her decease *But* I hereby declare my will to be that in default of any such direction or appointment as aforesaid to the contrary any child taking any part of the said trust monies stocks funds or securities under or by virtue of any direction or appointment to be made by my said wife in pursuance of the power for that purpose hereinbefore given to her shall not have or be entitled

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Hotchpot
clause.

marry again after my decease then do and shall after such marriage with and out &c. (see *ante*, p. 1572, n. (b)) And I do hereby declare that each of the said annual sums of £ and £ shall be paid without any deduction or abatement whatsoever.

If she marry
again a less
annuity.

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*Of Real and
 Personal Estates
 upon Trusts for
 Wife and
 Children.*

Maintenance
 clause.

Accumulation.

Power of ad-
 vancement.

to any further or other share of or in the unappointed part of the said trust monies stocks funds and securities without bringing such his her or their appointed share or shares into hotch-pot and accounting for the same accordingly *And* I hereby declare my will to be that my said trustees or the trustees or trustee for the time being of this my will shall pay and apply the whole or such part or parts as they or he shall think fit of the interest dividends and annual proceeds of the portion or respective portions to which any child or children shall or may for the time being be entitled in expectancy under the trusts aforesaid for and towards the maintenance and education of such child or children in the meantime and until such his her or their portion or respective portions shall become payable and my said trustees or trustee for the time being may either themselves or himself so pay and apply the same or may pay the same to the guardian or guardians of such child for the purpose aforesaid without seeing to the application thereof and do and shall during such suspense of absolute vesting as aforesaid accumulate all the residue of such interest dividends and annual proceeds (if any) in the way of compound interest by investing the same and all the resulting income and produce thereof from time to time in or upon any such stocks funds or securities as are hereinbefore mentioned for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded with power for the said trustees or trustee for the time being to resort to the accumulations of any preceding year or years and to apply the same towards the maintenance or education of the child for the time being presumptively entitled to the same in the same manner as such accumulations might have been applied in case they had been interest dividends and annual proceeds arising from the original trust fund in the year in which the same shall be so applied *And* I hereby declare my will that it shall and may be lawful for my said trustees or the trustees or trustee for the time being of this my will at any time or times after the decease of my said wife or during her lifetime in case she shall so direct by any writing under her hand to levy and raise any part or parts of the then expectant or presumptive or their vested portion or portions of any of my child or children under the trusts aforesaid not exceeding in the whole for any one such child one moiety or equal half part or share of his or her then expectant or pre-

sumptive or their vested portion and to pay and apply the same for his her or their preferment advancement or benefit in such manner as my said trustees or trustee for the time being of this my will shall in their or his discretion think fit And I hereby declare my will to be that if there shall not be any child of mine by my said wife who being a son shall attain the age of twenty-one years or die under that age leaving lawful issue living at the time of his decease or born in due time afterwards or who being a daughter shall attain that age or marry under that age then and in such case my said trustees or the trustees or trustee for the time being shall after the decease of my said wife and such default or failure of children as aforesaid stand and be possessed of and interested in all and singular the said trust monies stocks funds and securities and the interests dividends and annual proceeds thereof or such part or parts thereof respectively as shall not have become vested or been applied or disposed of under any of the trusts powers or authorities hereinbefore declared or contained *In trust* for my brothers (*names*) and sisters (*names*) respectively in equal shares as tenants in common *Provided nevertheless* that if any one or more of my brothers or sisters shall die before me and shall leave no issue of his her or their body or respective bodies who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age then and in every such case as well the share hereinbefore originally limited to my brother or sister so for the time being dying and whose issue shall so fail as aforesaid of and in the said trust monies stocks funds and securities as the share or shares which by virtue of this present clause would have survived or accrued to such brother or sister of and in the same trust monies stocks funds and securities if he or she had survived me shall remain and be *In trust* for the survivors or survivor or others or other of my said brothers and sisters and if more than one in equal shares as tenants in common *Provided nevertheless* that if any one or more of my brothers and sisters shall die before me leaving a child or children of his or their body or respective bodies who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age then and in every such case as well the share hereinbefore originally limited to my brother or sister so for the time being dying as aforesaid of and in the said trust monies

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Gift over on
failure of pre-
ceding trusts.

Shares of
brothers and
sisters dying
without issue
to go to sur-
viving brothers
and sisters.

Proviso that if
brothers and
sisters die in
testator's life-
time leaving
issue, then
issue to have
parents' share.

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Wife and
Children.*

Provision for
wife to be in
lieu of dower,
&c.

Power to ap-
point trustees.

stocks funds and securities as the share or shares which by virtue of the last mentioned clause would have survived or accrued to such brother or sister of and in the said trust monies stocks funds and securities if he or she had survived me shall remain and be *In trust* for all and every such children and child of such deceased brother or sister to be divided between or amongst them if more than one in equal shares as tenants in common And if there shall be but one such child then the whole of such share shall be in trust for that one or only child *Provided always* and I hereby declare my will to be that the provision hereby made for my said wife shall be accepted and taken by her in lieu and satisfaction of all dower thirds free-bench claims and demands whatsoever upon any of my real or personal estate whatsoever either by common law or custom or under or by virtue of any settlement or otherwise howsoever And I give [*Devise of estates held upon trusts or by way of mortgage, ante, p. 1566*] [*Declaration that receipts of trustees shall be good discharges, ante, p. 1396*] *Provided always* and I hereby declare my will to be that if the said trustees hereby constituted or any trustee or trustees to be appointed as hereinafter is provided shall die or go to reside abroad or desire to be discharged or refuse or become incapable to act in the execution of the trusts of this my will then and in every such case it shall be lawful for my said wife during her lifetime and after her death for the surviving or continuing trustees or trustee for the time being (and for this purpose refusing or retiring trustees shall if willing to act in the execution of this power be considered continuing trustees) or for the acting executors or administrators of the last surviving or continuing trustee to appoint a new trustee or new trustees in the place of the trustee or trustees so dying or residing abroad or desiring to be discharged or refusing or becoming incapable to act as aforesaid And that upon every such appointment all the trust estates monies stocks funds and securities then vested in the trustees or trustee for the time being or in the heirs executors or administrators of the last surviving or continuing trustee shall be so conveyed assigned and transferred that the same may be vested in the surviving or continuing trustee jointly with such new trustee or in such new trustees solely as the case may require And that every trustee so appointed as aforesaid may either before or after the said trust premises shall have been so vested as aforesaid act or assist in the execution of the trusts and powers of

this my will as fully and effectually to all intents and purposes as if I had hereby constituted him a trustee [*Clauses for indemnity of trustees and for their reimbursement, ante, p. 1567*] And I hereby appoint the said A. B. and C. D. executors of this my will And I hereby authorize and empower the executors or executor for the time being acting in the execution of this my will to pay and satisfy any debts owing or claimed to be owing by or from me or my estate and any liabilities to which I or my estate may be subject or may be alleged to be subject upon any evidence they or he shall think proper and to accept any composition or any security for any debt or debts owing to me or to my estate and to allow such time for the payment of any such debt or composition for a debt either with or without taking security for the same as to my said executors or executor shall seem reasonable and also to compromise and compound or submit to arbitration and adjust and settle all debts accounts transactions matters and things which shall at the time of my death be owing or claimed to be owing from or to me or my estate or be depending or arise between me or my executors or executor and any other persons or person and for any of the purposes aforesaid to enter into give sign make do and execute such deeds or instruments of composition releases bonds or instruments of submission to arbitration and other instruments acts deeds matters and things as the said executors or executor for the time being acting in execution of the trusts of this my will shall think expedient and to abide by observe and perform or to contest any instrument or transaction which may have been made or entered into as aforesaid or any award or awards to be made in pursuance of any such submission to arbitration as aforesaid and generally to act in relation to the premises in such manner as they or he shall think expedient without being liable for any loss which may be occasioned thereby And I appoint my said wife and the survivors and survivor of them guardians and guardian of the persons and estates of my infant children during their respective minorities And I revoke &c. (*ante, p. 1568*) In witness whereof I the said W. X. have to this my last will and testament hereunder set my hand this day of in the year of our Lord 18 .

No. DCL.
*Of Real and
 Personal Estates
 upon Trusts for
 Wife and
 Children.*
 Power to com-
 promise claims.

No. DCLI.

No. DCLI.

Trade.

Bequest of
money due on
insurances to
trustees.

To invest in
the funds.

Bequest of
business and
stock in trade
to trustees.

*Will of a Tradesman.**(Precedent for carrying on a Business.)*

This is the last will of &c. I give and bequeath all and every the sum and sums of money which may become payable to my executors after my decease in respect of any insurance or insurances either already or hereafter to be effected by me at any insurance office in London or elsewhere unto (trustees) Upon trust that they the said (T.) and the survivor of them and the executors or administrators of such survivor do and shall as soon as conveniently may be after my decease lay out and invest all such sum or sums of money as shall be received in respect of any insurance in their or his names or name in the public stocks or funds of Great Britain or at interest upon government or real securities in England or Wales and do and shall from time to time during the life of my wife C. with her consent in writing and after her decease at their or his discretion alter vary &c. (see ante, pp. 1420, 1572) And I do hereby declare that the said (T.) and the survivor of them and the executors and administrators of such survivor shall stand and be possessed of the said trust monies stocks funds and securities and the interest dividends and annual produce thereof Upon trust that they the said (T.) do and shall pay the interest and dividends thereof unto or permit the same to be received and taken by my said wife and her assigns during her life for her and their own absolute use and benefit And from and immediately after the decease of my said wife I declare that the said (T.) and the survivor of them and the executors and administrators of such survivor shall stand and be possessed of the said trust monies stocks funds and securities Upon and for the trusts intents and purposes hereinafter declared and expressed of and concerning the same And whereas I have for some time past carried on the business of at and am desirous that the said business should be carried on for the benefit of my said wife and children as hereinafter is mentioned Now therefore I hereby give and bequeath my said business of and all my interest therein and all my stock and effects now or to be hereafter employed therein and all monies and debts which shall belong and be due and owing to me at the time of my decease for or on account of the said business And also all messuages workshops warehouses and hereditaments now

or hereafter to be employed in or connected with the said business unto the said (*T.*) their executors and administrators Upon and for the trusts intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that they the said (*T.*) and the survivor of them and the executors or administrators of such survivor do and shall manage and carry on the said business until my son C. B. shall attain the age of twenty-one years or die which shall first happen and in the event of the death of my said son C. B. in the lifetime of my son H. B. until my said son H. B. shall attain the age of twenty-one years or die which shall first happen *And* for that purpose I declare that they the said (*T.*) or the trustee for the time being shall have the fullest power over the said business which I can give them or him by this my will so as to enable them and him to carry on manage and conduct the business in the same manner to all intents and purposes as I myself could do if I were living and acting therein *And* I do hereby declare that during such time as the said business shall be carried on by the said (*T.*) or the trustee for the time being in pursuance of this my will they and he shall stand and be possessed of and interested in the said business stock and effects monies debts messuages workshops warehouses and premises and the profits to arise from the same Upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations including the provision hereinafter made for my said wife upon for with under and subject to which the said (*T.*) or the survivor of them or the executors or administrators of such survivor would in pursuance of this my will stand and be possessed of and interested in the monies to arise by the sale of the said business and premises and the stocks funds and securities in which the same shall be invested and the interest and dividends thereof in case the said business and stock were sold immediately after my decease or as near thereto as circumstances will admit of *Provided always* and I do hereby direct that during such time as the said business shall be carried on by the said (*T.*) or the survivor of them or the executors or administrators of such survivor in pursuance of this my will my said sons C. B. and H. B. and the survivor of them if willing and competent shall always be employed therein and after they or he shall attain the age of twenty-one years the said (*T.*) their executors and administrators shall carry on and manage the said business with their advice and assistance and do and shall with and out of the profits to arise out of the said business allow

No. DCLI.

Trade.

To carry on the business until his son C. B. or H. B. shall attain his age.

No. DCLI.

Trade.

Proviso for dis-
continuance of
the business.

them and him an annual sum not exceeding £ each for their or his trouble as the said (*T.*) or the survivor of them or the executors or administrators of such survivor may think proper *Provided always* and I do hereby further declare that it shall be lawful for the said (*T.*) or trustee for the time being to discontinue the said business at any time whilst the same shall be carried on by them in pursuance of this my will But in case the said business shall not have been previously discontinued by the said (*T.*) or the survivor of them or the executors or administrators of such survivor *Then* I direct that when and so soon as my said son C. B. shall attain the age of twenty-five years or in the event of the death of my said son C. B. under that age which shall first happen or in the event of the death of my said son C. B. whilst my said son H. B. shall be living and under the age of twenty-five years then when and so soon as my said son H. B. shall attain the age of twenty-five years the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall offer to sell to my said sons C. B. and H. B. or in the event of the refusal or previous death of either of them then to the other of them (as the case may be) for such price as the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall think fair and reasonable my said business and all my interest therein and all the stock and effects for the time being employed therein and all messuages workshops and premises employed in or connected with the said business *Provided nevertheless* that my said sons C. B. or H. B. or either of them (as the case may be) shall not be required to pay any consideration for the goodwill or custom of the said trade And in case of the refusal of each of them my said sons or the survivor of them to purchase the same when offered to them or either of them in pursuance of the directions hereinbefore contained or in case of the death of both of them my said sons before the same shall be so offered for sale to them or either of them as aforesaid or in case the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall in pursuance of the power hereinbefore for that purpose given think proper to discontinue my said business altogether *Then* and in any of the said cases I direct that the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall forthwith absolutely sell and dispose of the said business stock and effects messuages workshops warehouses and premises to any person or persons

willing to purchase the same for such price as the said (T.) or the survivor of them or the executors or administrators of such survivor shall think reasonable And I do hereby declare that if the said person or persons purchasing the said business stock and effects messuages &c. shall not pay down the price or consideration in money for the same it shall be lawful for the said (T.) or the survivor of them or the executors or administrators of such survivor to accept a security for the payment of the said price or consideration or of so much thereof as shall not be paid down with interest for the same in the meantime after the rate of £5 for every £100 by the year by a mortgage of the premises so purchased (except the said business stock and effects for the time being employed in the said business) and also all such other real or personal security as they the said (T.) or the survivor of them or the executors or administrators of such survivor shall think proper to accept And I further declare that if the person or persons purchasing the said business stock effects workshops warehouses and premises shall be my sons C. B. and H. B. or either of them Then they or he so purchasing as aforesaid shall not be bound or obliged (except in the event of money being wanted for the advancement of any one or more of my present or future born sons as is hereinafter mentioned) to pay off in any one year more than part of the money so secured And I do hereby declare that the said (T.) or the survivor of them or the executors or administrators of such survivor shall stand and be possessed of and interested in the monies to arise by the sale of the said business hereinbefore directed to be sold Upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations hereinafter expressed and declared of and concerning the same And whether the said (T.) or the survivor of them or the executors or administrators of such survivor shall by virtue of this my will carry on the said business or not I do hereby give them and him full power and authority to enter into such contracts and agreements respecting the said business and premises as they or he shall think proper and to increase or abridge the said business and to make such sales and dispositions of all and every part of the said stock effects workshops warehouses and premises now or hereafter to be employed in or connected with the said business and with and out of the monies which shall come to their hands by virtue of this my will (except the sums of money which may come to my executors in respect to such insurance or in-

No. DCLI.

Trade.

 Security to be taken for purchase money.

 Trustees to deal with the trust property as they think fit.

No. DCLI.

*Trade.*Losses to be
paid out of
trust monies.Liberty for
wife to reside
in house.

surances as are hereinbefore mentioned) to make such purchase or purchases of stock and effects as the said (*T.*) or the trustee for the time being shall think proper *And also* to adjust and settle all accounts and transactions in which I shall be interested at the time of my decease and to compound and compromise any debts owing to me or claimed from me or my estate *And also* to submit to arbitration all matters between me and any other persons and generally to transact all matters and concerns respecting the said business and premises and to do and execute all such acts and deeds relative thereto in such and the same manner to all intents and purposes as if they or he were absolutely entitled to or beneficially interested in the said business and premises *And* I do hereby declare that all losses charges and expenses of carrying on and conducting the said business shall be borne and paid with and out of the monies which shall come to their or his hands by virtue of this my will (except such sum or sums of money as are hereinbefore excepted) *Provided always* and I hereby further declare that notwithstanding anything hereinbefore contained it shall be lawful for my said wife and she shall be entitled during her life to hold and occupy the messuage or dwelling house where I now reside and which is adjoining the workshops &c. where my said business is now carried on without paying any rent for the same *And* as to all the rest and residue of my personal estate and effects whatsoever and wheresoever I give and bequeath the same unto the said (*T.*) their executors and administrators *Upon trust* that they the said trustees and the survivor of them or the executors or administrators of such survivor do and shall with all convenient speed after my decease sell dispose call in and convert into money such part of my residuary estate as shall not consist of ready money *And* for promoting and facilitating such sale or sales do and shall enter into make and execute all such contracts assignments and assurances as the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall think proper *And* do and shall with and out of the monies which under or by virtue of the residuary bequest hereinbefore contained shall come to their or his hands by all or any of the means aforesaid *Also* with and out of the monies which by any other means shall come to their or his hands by virtue of this my will (except such sums or sum of money as are hereinbefore excepted) pay satisfy and discharge all my just debts and funeral and testamentary expenses and the several pecuniary legacies given by this my will or which I shall

give by any codicil to this my will And I direct that the said (T.) or the survivor of them or the executors or administrators of such survivor do and shall lay out and invest so much of the said monies as shall come to their or his hands as aforesaid (except as before excepted) subject to the payment of my just debts &c. or to the aforesaid trusts for carrying on the said business and also the monies to arise by the sale of my said business and my interest therein and of the stock &c. (but subject and without prejudice to the power hereinbefore given to my said (T.) or the survivor of them or the executors or administrators of such survivor to allow the same monies to remain on such securities as aforesaid) in the names or name of them or him in the purchase of stocks &c. at interest &c. upon &c. securities &c. and do and shall from time to time alter &c. the said trust monies into or upon other stocks &c. of a like nature at his or their discretion And I hereby declare that the said (T.) or the survivor of them or the executors or administrators of such survivor do and shall during the life of my said wife C. with and out of such last mentioned interest dividends and annual produce levy and raise such an annual sum as together with the interest dividends and annual produce of the trust monies hereinbefore settled on my said wife for her life will amount to the annual sum of £ clear of all deductions and abatements whatsoever and do and shall during the life of my said wife pay such annual sum to my said wife or her assigns by four equal quarterly payments in every year the first payment thereof to commence and be made at the end of calendar months next after my decease *Provided always* and I do hereby direct that my said wife shall with and out of the said annual sum of £ hereinbefore provided for her educate and maintain my said sons C. B. and H. B. during their respective minorities and all and every my present and future born children and child until such times or time as they or he shall respectively become entitled by virtue of this my will to vested interests or a vested interest in the portions or portion for them him or her hereinafter respectively provided And I hereby declare that the said (T.) or the survivor of them or the executors or administrators of such survivor do and shall subject and without prejudice to the levying and raising of such annual sum of £ so to be paid to my said wife C. during her life as aforesaid stand possessed of and interested in the said trust monies lastly hereinbefore directed to be laid out and invested and the stocks funds and securities in which the same shall be invested and the interest dividends and annual produce thereof

No. DCLI.
Trade.

To allow wife
the additional
annual sum of
£ .

No. DCLI.

Trade.

All the trust monies to be divided equally among the children at the age of twenty-one or marriage.

Upon trust for daughters for their separate use.

Receipts of daughters to be valid discharges.

respectively *And* do and shall from and immediately after the decease of my said wife stand and be possessed of the said trust monies stocks &c. hereinbefore settled on her and the interest &c. thereof upon and for the trusts &c. and with under and subject &c. hereinafter expressed &c. concerning the same respectively (that is to say) I hereby direct that all the said trust monies stocks &c. shall be divided in equal shares and proportions between or amongst all and every my present and future born children and child who being a son or sons shall respectively attain the age of twenty-one years and who being a daughter or daughters shall respectively attain the age of twenty-one years or marry under that age with the consent of her or their guardian or guardians for the time being And the respective shares of each and every such present and future born son in the said trust monies stocks &c. and the interest &c. thereof shall remain and be *In trust* for such son his executors administrators and assigns respectively for his and their own absolute use and benefit And as to the respective share of each and every such present and future born daughter as aforesaid in the said trust monies &c. and the interest &c. thereof I do hereby declare that the said (*T.*) or the survivor shall stand possessed of and interested in the same *Upon trust* that they the said (*T.*) or the survivor of them or the executors or administrators of such survivor do and shall during the life of each respective daughter pay and apply the interest &c. of such respective shares to such person or persons only and for such intents and purposes only as such respective daughter whether covert or sole and if married as if she were sole and unmarried shall from time to time by any writing to be signed by her but not in any mode of anticipation (*ante*, p. 1542) direct and appoint And in default of and until such direction or appointment into the proper hands of such respective daughter for her sole and separate use and benefit exclusively of any husband whom she may marry and without being in anywise subject to his debts control interference or engagements *And* the receipts of such respective daughter or of such person as she shall from time to time direct or appoint to receive the said interest &c. or any part thereof shall whether she be covert or sole be an effectual discharge for the money therein mentioned and acknowledged to be received And after the decease of such respective daughter the said share in the said respective trust monies &c. shall remain and be *In trust* for all and every or such one or more exclusively of the other or others of the children or child of such respective daughter with such provision for

No. DCLI.

Trade.

their respective maintenance education and advancement in such shares if more than one and with such restrictions and in such manner as such respective daughter by any deed or by her will or any codicil thereto shall whether covert or sole from time to time appoint And in default of such appointment and so far as any such appointment shall not extend *In trust* for all and every the children and child of such respective daughter in equal shares as tenants in common and not as joint tenants, (see *ante*, p. 1542) And if there shall be but one such child the whole to be in trust for that one child And if there shall be no such child then in trust for such daughter her executors administrators or assigns *Provided always* and I do hereby further declare that it shall and may be lawful for every such respective daughter either by any deed or deeds to be by her respectively sealed and delivered in the presence of and attested by two or more credible witnesses or by her last will and testament in writing or any writing purporting to be her last will and testament signed and published in the presence of three or more witnesses and either before or after her marriage to appoint the whole or any part of the interest dividends and annual produce of her respective share in the trust monies stocks funds and securities to be paid after her decease to any husband whom she may marry and his assigns for his life *Provided always* and I do hereby further declare that after the decease of such respective daughter and in the meantime and until the vesting of the portion or portions so provided for the child or children of such respective daughter as aforesaid the said (*T.*) or the survivor of them or the executors or administrators of such survivor do and shall (but subject and without prejudice to the life interest of my said wife therein and to any life interest to which any husband of such respective daughter may for the time being be entitled to be by virtue of the power hereinbefore for that purpose contained) [*Powers of advancement, maintenance and accumulation, (ante, pp. 1543, 1544,) also proviso that receipts of trustees shall be sufficient discharges, (ante, p. 1396,) for appointment of other trustees by wife during her life, and trustees after her decease, (ante, p. 1576,) indemnity of trustees, (ante, p. 1567,) power to compromise claims, &c., ante, p. 1577*] And I do hereby nominate &c. (*wife and trustees*) to be executors of this my will [*Appointment of wife and trustees guardians of children, ante, p. 1577*] *In witness &c.*

No. DCLII.

No. DCLII.

Will of Married
Woman.*Appointment by Will by a Married Woman in exercise of Power reserved to her by Marriage Settlement.*

This is the last will and testament of me A. B. the wife of C. B. made by virtue of the power of appointment reserved to me as hereinafter mentioned Whereas under and by virtue of an indenture dated on or about the day of 1840 and expressed to be made between the said C. B. of the first part myself the said A. B. by my then name of A. K. spinster of the second part and (trustees) of the third part being the settlement made previously to and in consideration of my marriage with the said C. B. It was (amongst other things) agreed and declared that the said (T.) should stand possessed of certain trust monies therein mentioned and the stocks funds and securities in or upon which the same should be invested upon certain trusts in favour of myself and of the children or child of the said then intended marriage as in the said indenture are mentioned And by the said indenture it is agreed and declared that if there should not be any child &c. [see ante, p. 1416, and the power of appointment given to the wife, ante, p. 1417] And whereas the said trust monies have been invested by the said (T.) in the purchase of the sum of £ Three per Cent. Consolidated Bank Annuities now standing in their joint names in the books of the Governor and Company of the Bank of England for entering the transfers of the same stock And whereas at present there is no child of my said marriage Now I the said A. B. by force and virtue and in exercise and execution of the power or authority reserved to me as hereinbefore is mentioned and of every other power in anywise enabling me in this behalf do by this my last will and testament in writing signed by me in the presence of and attested by the two credible persons whose names are intended to be hereunder subscribed as witnesses hereto direct and appoint that from and after the failure or determination of the trusts which precede my power of appointment the said sum of £ Three per Cent. Consolidated Bank Annuities and any other stocks funds and securities in or upon which the same or the produce of the sale or conversion thereof may hereafter be laid out and invested and all right and interest in the same respectively shall go remain and be in trust for (name of legatee) his executors administrators and assigns In witness &c.

No. DCLIII.

Provisions as to Annuities.

No. DCLIII.

Annuities.

I give and bequeath an annuity or yearly sum of £ clear
of all deductions to A. for his natural life *And also* an annuity
of £ to B. for his natural life and I direct the same respec-
tively to be paid half yearly on the 11th day of January and the
11th day of July in every year the first payment thereof respec-
tively to commence on such of those days as shall next happen
after my decease And if the said A. and B. or either of them
shall die after my decease on any other than the half yearly day
of payment then a proportional part of the said annuities respec-
tively shall be paid in respect of the current half year to the exe-
cutors administrators or assigns of the annuitant so dying as
aforesaid *And I declare* that it shall not be lawful for the said
annuitants or either of them to accept or take a gross sum as or
for the value of the said annuities respectively and in lieu of such
respective annuities (a) *And I direct* my executors to raise and
apply out of my residuary personal estate such sums of money
as shall be sufficient to discharge the legacy duty or duties pay-
able to government in respect of the said annuities *And I direct*
that my executors shall with and out of my residuary personal
estate purchase in their or his names or name such an amount
of Three Pounds per Cent. Bank Annuities as shall be sufficient
by means of the dividends thereof to answer and satisfy the
several annuities hereby bequeathed or such of them as shall be
subsisting and payable And I hereby direct that the dividends of
the Three Pounds per Cent. Bank Annuities so to be purchased as
last aforesaid shall from time to time be paid and applied by my
executors for the time being for the purposes last aforesaid And
I hereby direct that until such purchase or investment as last
hereinbefore directed shall be made the several annuities hereby
bequeathed or such of them as shall be subsisting and payable
shall be paid and satisfied from time to time out of the income of
any part of my said residuary estate which shall be producing
income and in default thereof by and out of the principal monies
to arise or come to the hands of my said executors for the time
being as hereinbefore is mentioned *And I further direct* that
whenever any annual payment intended to be provided for by the

Request of
annuities.Provision for
annual pay-
ments.(a) See *Dawson v. Hearn*, 1 Russ. & M. 606.

No. DCLIII.

Annuities.

Direction to
executors to
purchase life
annuity.

purchase or investment aforesaid shall cease to be payable a proportionate part of the said last mentioned trust fund shall sink into and form part of my residuary personal estate and be applied upon the trusts hereby declared concerning the same

I direct my executors hereinafter named to purchase for an irredeemable annuity of £ for his life such purchase to be made in the discretion of my executors either from government or any public company or any private person or persons but the annuity if purchased from any private person or persons shall be well secured on freehold leasehold or copyhold property And I direct that until such purchase shall be made the said annuity shall be paid out of my general estate in equal quarterly portions commencing from my decease And I declare that the said annuitant or her executors or administrators shall not be allowed to accept the value of the said annuity in lieu thereof.



No. DCLIV.

Rent-charge.

No. DCLIV.

Devise of Rent-Charge with Powers of Distress and Entry.

And I give and devise unto and his assigns during the term of his natural life one yearly rent-charge of £ of lawful money of Great Britain to be chargeable upon and yearly issuing and payable out of [*name the estate*] and to be paid by equal quarterly payments on the day of &c. [*name the days*] in every year without any deduction or abatement whatsoever on account of legacy duty or in respect of any other taxes charges or impositions whatsoever the first quarterly payment of the said yearly rent-charge of £ to be made on such of the said days of payment as shall first happen next after my decease And my will is that in case and when and so often as the said yearly rent-charge or any part thereof shall at any time be unpaid for twenty-one days next after any of the days hereby appointed for payment thereof then and so often it shall be lawful for the said (*Annuitant*) or his assigns during his life to enter into and distrain upon the said hereditaments and premises hereinbefore charged therewith or any part thereof and to dispose of the distress and distresses then and there found according to law To the intent that thereby or otherwise the said yearly rent-charge and every part

thereof and all costs charges and expenses occasioned by reason of the non-payment thereof shall be fully paid and satisfied And my will further is that in case the said yearly rent-charge or any part thereof shall at any time or times be unpaid by the space of forty days next after any of the days hereby appointed for payment thereof Then and so often (although there shall not have been any legal demand made thereof) it shall be lawful for the said (A.) and his assigns during his life to enter into and upon and hold the said hereditaments and premises hereinbefore charged or any part thereof and to receive and take the rents and profits thereof until he or they shall thereby therewith or otherwise be fully paid and satisfied the same yearly rent-charge of £ and all the arrears thereof due at the time of such entry or afterwards to become due during his or their being in possession of the same premises together with all costs charges and expenses which he or they shall sustain by reason of the non-payment thereof and such possession when taken to be without impeachment of waste [*It is usual to limit a term of years for securing a rent-charge, see ante, pp. 191, 257, 258, 1374, 1375*].

No. DCLIV.

Rent-charge.

No. DCLV.

Provisions as to Advowson.

No. DCLV.

Advowson.

And I do hereby give and devise unto the said (*Trustees*) their heirs and assigns for ever all that my advowson donation and right of patronage of in and to the rectory and parish church of in the county of with the appurtenances *Upon the trusts* nevertheless hereinafter expressed and declared concerning the same (that is to say) *In trust* that they the said (*T.*) or the survivor of them his heirs or assigns do and shall present my son to the said church when the same shall become vacant by the death or resignation of the present incumbent thereof if my said son shall have previously become qualified to accept the same and shall be willing to be presented thereto And in case my said son shall not then be qualified to accept and hold the said benefice then *In trust* that they the said (*T.*) or the survivor &c. shall present to the said rectory or church such person as the said (*T.*) or the survivor of them his

Devise of an
advowson.

No. DCLV.

Advowson.

heirs or assigns shall think proper and as shall be qualified to accept the same and take a good and sufficient bond from such person to resign (a) the said rectory or parish church in favour of my son when and so soon as he shall be qualified to be presented thereto *And upon this further trust* that when my said son shall have been instituted and inducted to the said rectory and church of as aforesaid or in case my said son shall not at such age think fit to take upon him the holy order of priesthood or shall be unwilling to be presented to the said church then and in either of the said cases the said (T.) or the survivor of them his heirs or assigns shall upon the request and at the proper costs and charges in the law of my said son convey and assure the said advowson donation and right of patronage of in and to the said rectory and parish church unto and to the use of my said son his heirs and assigns for ever and to and for no other use intent or purpose whatsoever.

Devise of advowson by the owner and incumbent in trust for sale.

I give and devise all that the advowson and right of patronage and presentation of or to the rectory or parish church of &c. unto and to the use of (T.) their heirs and assigns *Upon trust* that they or the survivor of them or the heirs of such survivor shall present and nominate to the said church such fit person duly qualified to hold the same not being under the age of years at the time of such presentation as the said (T.) or the survivor of them or the heirs of such survivor shall in their or his discretion think proper in order that such person may be instituted and inducted and become the incumbent of the said parish church of &c. *And upon trust* that the said (T.) or the survivor of them or the heirs or assigns of such survivor shall with all convenient speed after such person shall be so presented and inducted as aforesaid sell the same advowson or right of patronage and presentation either by public auction or private contract as they or he shall think proper with power to buy in the said premises at any auction or to rescind or vary any contract for the sale thereof without being answerable for any loss to be occasioned thereby *And I declare &c. [Trustees' receipts to be sufficient discharges where the will does not contain the general clause]* *And I declare* that the said (T.) and the survivor of them shall hold the monies to arise from the sale of my said advowson upon the trusts hereinafter declared concerning my residuary real and personal estates.

(a) See 9 Geo. IV. c. 49.

No. DCLVI.

Bequest of Legacy for separate Use of Married Woman.

No. DCLVI.

*Legacy for
Separate Use.*

And I give and bequeath to the said (*Trustees*) the sum of £ sterling *Upon trust* that they the said (*T.*) or the survivor of them or the executors or administrators of such survivor do and shall lay out or invest the same in their or his name or names in or upon the parliamentary stocks or public funds of Great Britain or at interest upon government or real securities in England and do and shall (with the consent in writing of (*Legatee*) during her life) alter vary and transpose the said stocks funds and securities at their or his discretion and do and shall during the joint lives of the said (*Husband*) and (*L.*) his wife pay and apply the interest dividends and annual proceeds of the said sum of £ and the stocks funds or securities in or upon which the same shall be laid out or invested to such person or persons and for such intents and purposes as the said (*Wife*) shall from time to time notwithstanding her coverture by any writing or writings under her hand but not so as to dispose of or affect the same by any sale or mortgage or otherwise in the way of anticipation direct or appoint *And* in default of any such direction or appointment into her own hands for her own sole and separate use and benefit independently and exclusively of the said (*H.*) without being in anywise subject to his debts control interference or engagements and the receipt of the said (*W.*) or of her appointees notwithstanding her coverture to be from time to time sufficient discharges for the same *And upon further trust* that if the said (*H.*) shall die in the lifetime of the said (*W.*) his wife then and in such case the said (*T.*) or the survivor of them or the executors or administrators of such survivor do and shall immediately after the decease of the said (*H.*) pay transfer or assign the said sum of £ and the stocks funds or securities in or upon which the same shall be laid out or invested to the said (*W.*) her executors administrators or assigns for her and their proper use and benefit and without being subject to any disposition of or by the said (*H.*) during his lifetime *And upon further trust* that if the said (*W.*) shall die in the lifetime of the said (*H.*) her husband then and in such case the said (*T.*) or the survivor of them or the executors or administrators of such survivor do and shall from and after the

No. DCLVI.
*Legacy for
 Separate Use.*

decease of the said (*W.*) stand and be possessed of and interested in the said sum of £ and the stocks funds or securities in or upon which the same shall be laid out or invested and the interest dividends and annual produce thereof upon and for such trusts intents and purposes as the said (*W.*) notwithstanding her coverture shall by her last will and testament in writing or any codicil or codicils thereto or any writing or writings in the nature of or purporting to be a will or codicil direct or appoint And in default of such direction or appointment and so far as any such direction or appointment shall not extend *In trust* for the person or persons who under the Statute for the Distribution of the Effects of Intestates would at the decease of the said (*W.*) have become entitled to her personal estate if the said (*H.*) had died during her lifetime and she the said (*W.*) had been unmarried and intestate.



No. DCLVII.
*Legacy for
 Separate Use.*

No. DCLVII.

Another Form of Bequest to separate Use of Married Woman.

I give and bequeath unto (*Trustees*) the sum of £ sterling to be paid at the end of twelve calendar months next after my decease with interest for the same at the rate of £4 per cent. per annum from the day of my decease *In trust nevertheless* for the sole use and benefit of (*married woman*) the wife of &c. to be disposed of as she shall notwithstanding her coverture by any writing or writings signed by her order and direct free from the debts control and engagements of her present or any future husband for which purpose I direct the receipts of the said (*wife*) or of her appointee or appointees as aforesaid shall notwithstanding her present or any future coverture be good and effectual discharges for her said legacy or sum of £ and the interest thereof or any part thereof respectively.



No. DCLVIII.

*Trust for Testator's Son until he shall incur or become
Bankrupt, &c.*

No. DCLVIII.

*Trust until
Bankruptcy, &c.*

Upon trust (a) to pay the interest dividends and annual proceeds of the said trust monies stocks funds and securities unto my said son John during his life or until he shall at any time or times assign or charge or attempt to assign or charge or otherwise dispose of the same interest dividends and annual proceeds or any part thereof by way of anticipation or until my said son shall be adjudicated a bankrupt or take the benefit of any act or acts of parliament now in force or hereafter to be passed for the relief of insolvent debtors or shall compound his debts or assign over his effects for the payment thereof or shall do any other act whereby the same interest dividends and annual proceeds or any part thereof might if the same had belonged absolutely to my said son be some wise assigned charged or incumbered and from and after the determination of the interest of my said son by any of the acts or means aforesaid then and from thenceforth during the remainder of the natural life of my said son Upon trust to pay and apply the yearly interest dividends and annual proceeds of the said trust monies stocks funds and securities for or towards the maintenance of the infant children or child (if any) for the time being of my said son without regard to his ability to maintain such children or child and if and when there shall not be any such child to the wife (if any) of my said son for her separate use and benefit but so as she shall not have power to dispose of or charge the same by way of anticipation and if and when and so often as my said son shall have neither wife nor infant child the same interest dividends and annual proceeds shall be paid unto and equally between or among his children or child of full age (if any) and if and when there shall not be any such child then to my residuary legatee or his executors administrators or assigns.



(a) It is assumed that money is bequeathed to trustees to invest in their names upon government or real securities. See *ante*, p. 1591.

No. DCLIX.

Codicil to a
Will.

No. DCLIX.

*Codicil appointing a Trustee and Executor in the place of one
deceased.*

This is the first codicil to the last will and testament of me
(*testator's name, &c.*) which will bears date the day of
in the year of our Lord 185 *Whereas* (*name*) named in my
will as a trustee and executor is lately dead *Now* it is my will
that (*name, &c. of new trustee*) shall be substituted in the place
of the said (*deceased trustee*) as one of the trustees and executors
of my said will And I direct that my said will shall be read
and construed and shall have the same operation and effect in
all respects as if the name of the said (*new trustee*) had been in-
serted therein in the place and stead of the name of the said
(*deceased trustee*) and in all other respects I hereby confirm my
said will *In witness* whereof I the said A. B. have to this
my codicil set my hand this day of in the year of
our Lord

A. B. (L. s.)

Signed and declared by the said tes-
tator A. B. as and for a codicil to
be annexed to his last will and to be
taken as part thereof in the presence
of us we being both present at the
same time who in his presence and
in the presence of each other have
hereunto subscribed our names as
witnesses.

R. L.
A. M.

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